

# Investigations Division Policy and Procedures Manual



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

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### **General Administration**



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# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## GENERAL ADMINISTRATION

### CHAPTER ONE

#### **EQUIPMENT 100.000**

#### **EQUIPMENT TRACKING 100.005**

The Investigations Division (ID) maintains standard BOE issued and specialized equipment to carry out its operational objectives. The Headquarters Property Coordinator (PC) is responsible for tracking and accounting for all of the equipment assigned to the ID. The ID's equipment inventory shall be maintained in a database, which will identify a description of the property, the state decal number, serial number, if applicable, the location of the piece of equipment, and/or individual to whom the equipment is assigned. The PC is responsible for verifying and updating the inventory to reflect changes and to insure that the ID's inventory records are current.

#### **ORDERING EQUIPMENT 100.010**

- To acquire new equipment, staff must first complete form BOE-287, *Requisition for Purchase* (2 copies), with adequate justification. Once completed, this form shall be forwarded to the appropriate supervisor and Area Administrator for approval.
- Once approved, the Area Administrator will forward the BOE-287 to the Chief, Investigations Division (Chief), for approval.
- Once approved, the Chief's Executive Secretary will then finalize the documentation and forward it to Procurement for processing.
- The Chief's Executive Secretary will provide a copy of the BOE-287 to the PC for tracking purposes.
- Upon arrival at the designated office location, the equipment will be delivered to the Area Administrator or designee.
- To confirm that the purchase order has been filled, the Area Administrator or designee will provide two (2) copies of the delivery sheet to the Chief's Executive Secretary within 5 working days of delivery to confirm that the purchase order has been filled.
- Upon receipt, the Chief's Executive Secretary will give a copy of the delivery sheet to the PC for tracking purposes. The PC will be responsible for adding any qualifying equipment to the ID inventory database.
- Form ID-010, *Accountability of "New" Equipment* (equipment with a State Decal Number, Only) (Intranet), will be used by the PC to enter new equipment into the database and assign accordingly. The Area Administrator or designee receiving new equipment will be required to complete this form when the equipment is received. The completed form will then be forwarded to the PC, who will be responsible for updating the database.

#### **TRANSFERRING, SURVEYING, OR REASSIGNING EQUIPMENT 100.015**

Form ID-011, *Property Transfer of Accountable Equipment* (equipment with a State Decal Number, only Intranet), will be used when equipment is surveyed, transferred between offices, or reassigned between employees. The responsibility for completing this form will be that of the supervisor receiving, surveying, or reassigning the equipment. The completed form will then be forwarded to the PC, who will be responsible for updating the ID inventory database. If a supervisor is transferring equipment to another crew, he/she is required to send an e-mail message to the PC to advise of the transfer so that a follow-up by the PC can be made for the proper form.

*No employee is to transfer equipment, even to an employee on the same crew, without supervisor approval and completion of a transfer form.*

#### **ANNUAL INVENTORY OF EQUIPMENT 100.020**

The PC must conduct an annual inventory of accountable equipment. Form ID-009, *Property Inventory Sheet* (Intranet), will be used during the ID's annual accountability of equipment.

The PC will fill out the form according to information contained in the database and attach it to a memorandum directed to the appropriate supervisor. Any corrections will be noted by the supervisor on the form and returned to the PC within the designated time period.



## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **LOST, STOLEN, OR DESTROYED PROPERTY** **100.025**

When State property has been lost, stolen, or destroyed, the supervisor of the local office or Headquarters' unit of the ID shall prepare a memorandum to notify the Principal Internal Auditor (ISAD), the unit's designated Property Coordinator and the appropriate line managers. Copies should be sent to the Chief Accounting Officer and the Financial Management Division, Contract and Procurement Section. When property (lost, stolen, or destroyed) includes information assets, an additional copy of the memorandum is sent to the Information Security Officer. **Any suspected loss or destruction of State property is to be reported to the appropriate supervisor within 24 hours. Do not wait to report a loss, theft, or destruction incident.**

The memorandum reporting the incident shall include:

- A brief description of events surrounding the incident.
- A decal or tag number(s) of property.
- The precautions taken to prevent such loss, theft, or destruction.
- A copy of the police report per BEAM §5195, if applicable.
- The supervisor's recommendation as to whether negligence is involved.

For further detail, please review BEAM sections 2205 and 5363.3.

Whenever possible, staff is to leave all assigned equipment, when the equipment is not needed for work purposes, in a secure cabinet in their cubicle over weekends or extended periods of leave. If you do not have sufficient, secure, storage, in your cubicle, please let your supervisor know and a locker will be ordered for you.

### **CONTROLLING AND PROCESSING BOE-628S** **102.000**

The responsibility for controlling and processing the BOE-628's, Request for Personnel Action, will be assigned to the HQs Attendance Coordinator (AC). The AC must maintain the position tracking database for the ID. As a result, the AC must have all the current information on the positions and their status (filled/vacant). The following procedures will be followed:

#### **HEADQUARTERS, NORTHERN AND SOUTHERN CALIFORNIA** **102.005**

- When a position is to be vacated, the supervisor will notify the Area Administrator of the position and the date it will be vacant.
- The Area Administrator will notify the AC of this information and request that the position be filled. If it is to be reclassified, the Area Administrator will notify the AC of the classification that will be used.
- The AC will provide the Area Administrator a copy of the applicable duty statement for the position (current or reclassified).
- The Area Administrator will return the duty statement to the AC with any changes necessary. The Area Administrator will also notify the AC of who is to be the contact person for filling the vacancy.
- Upon receipt of the duty statement, the AC will prepare the package to fill the position (BOE-628, current/proposed duty statement, organization chart, etc.) and submit the package to the Chief for approval.
- When approved, the package will be returned to the AC for processing.
- The mailing and receiving of the BOE-628 and *Employment Inquiry* letters, along with setting up interviews, and completion of the hiring process will be the responsibility of the clerical person reporting to the contact person, unless specified otherwise by the Area Administrator.
- The supervisor will notify the Area Administrator of the hiring decision.
- Upon completion of the hiring process, the Area Administrator will notify the AC of the successful candidate and submit the hiring list and all completed responses.
- The AC will contact the Transactions Section to obtain clearance to hire.
- Upon obtaining clearance, the AC will notify the Area Administrator (or a designee) who can then make the offer to the successful candidate.
- Upon acceptance, the AC will complete all necessary paperwork to finalize the hire.

### **ORDERING AND MAINTAINING FRANCHISE TAX BOARD (FTB) AND INTERNAL REVENUE SERVICE (IRS) RETURNS** **104.000**

## GENERAL ADMINISTRATION

### ORDERING INCOME TAX RETURNS

104.005

The investigator requesting the income tax returns shall fill out the appropriate forms (BOE-1144 for Franchise Tax Board (FTB), and/or BOE-33-B for Internal Revenue Service (IRS)) and submit them to his/her immediate supervisor for approval. The complaint number/case number should be written in the upper right hand corner. The approved forms will be forwarded to the Area Administrator for review and approval. The Area Administrator should initial under the complaint number/case number in the upper right hand corner. Once all approvals are secured, the form will then be forwarded to the HQ Evidence Custodian (EC).

The HQ EC will record the request in the IRS/FTB Returns Log and place a copy of the appropriate form (with all approvals) in the log for follow-up. The HQ EC then will send the BOE-1144 to the Special Procedures Section and/or the BOE-33-B to the Tax Policy Manager, Sales and Use Tax Department (SUTD).

### RECEIVING FTB AND IRS RETURNS

104.010

When the FTB and IRS returns are received by the ID, they will be routed to the HQ EC. The HQ EC will check the log and pull the corresponding copy(ies) of the requested form(s) that was placed in follow-up. The HQ EC will note the date the return was received in the log and on the follow-up copy of the appropriate form. The follow-up copy of the form will be used as a receipt and the supervisor of the requesting investigator will sign for the return. The HQ EC will then create a file and the follow-up copy will be placed in the file. The file will be placed in a file cabinet, in a secured area, with access limited to the HQ EC. The copy of the form(s) will be kept in the file until the return(s) is returned to the HQ EC.

### SECURITY OF FTB AND IRS RETURNS

104.015

All investigators will be responsible for maintaining returns in a secured locked area at all times that the returns are in their possession. Returns should not be maintained by a supervisor/investigator unless they are actively being used. When not being used, the returns should be returned to HQ EC for storage.

The EC will maintain all IRS/FTB returns in a locked container, clearly labeled "Federal/State Tax Returns", and in a secured area. When FTB/IRS returns are received by ID, the EC will notify the investigator of the receipt. When an investigator wishes to review the returns, the investigator will make arrangements with the EC, or designee, for the transfer of the returns. The ID-007, *IRS/FTB Return Log*, will be completed to track the transfer. Investigators who check out returns are responsible for the safe keeping of the returns while in their possession, which includes locking the returns in a drawer while not physically reviewing them. All checked out returns are to be transferred back to the EC, or designee, on the same day they were checked out, and prior to leaving the work place for the day. The ID-007 will again be completed to track the transfer.

### RETURNS HELD OVER 30 DAYS

104.020

The HQ EC will be responsible to follow-up on all returns held over 30 days. Generally, returns should not be held for over 30 days unless they are part of an audit, basis for assessment, etc. Should the investigator determine the return(s) should be held longer, the investigator must obtain supervisor approval. The HQ EC will notify the appropriate supervisor when returns have been held for over 30 days. The supervisor will instruct the HQ EC to destroy or to hold the returns. The supervisor can only approve up to a six (6) month extension from the date received. Extensions over six months must be approved by the Area Administrator. Extensions over twelve (12) months must be approved by the Chief or designee. The HQ EC is responsible for scheduling appropriate follow-ups on extension requests. Should returns no longer be needed prior to the end of an extension, the appropriate supervisor should notify the HQ EC.

### RETURN OF FTB AND IRS RETURNS TO THE EVIDENCE CUSTODIAN

104.025

When FTB and IRS returns are returned to the HQ EC, the follow up copy of the BOE 1144 or BOE 33-A will be signed and dated by the HQ EC as received and a copy given to the supervisor. IRS returns must have a completed BOE-33-A form attached when returned to the HQ EC. Each time a return is taken out of secure storage, the supervisor/investigator must sign and date the follow up copy, which will be maintained in the HQ EC FTB and/or IRS file.

### RETURN/DESTRUCTION OF FTB AND IRS RETURNS

104.025

When the returns are no longer needed, the HQ EC will be responsible for their proper disposal. FTB returns will be destroyed by shredding. The date of destruction will be noted in the log maintained by the HQ EC. IRS returns will be returned to the SUTD Tax Policy Manager along with a form BOE-33-A. Returns sent back to SUTD must be sent in a manner which will preserve confidentiality (i.e. sealed envelope, etc.). The date the return is returned to SUTD will be noted in the log maintained by the HQ EC.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **ADDITIONAL INFORMATION ON FTB and IRS RETURNS** **104.030**

For more information on requesting and handling IRS and FTB tax returns, please refer to the Compliance Policy and Management Guidelines, section 110.180 and section 110.400.

### **REQUEST TO DISCLOSE IRS INFORMATION** **104.035**

The IRS requires the Board of Equalization to obtain IRS authorization to disclose any information from IRS tax returns. To obtain authorization, ID investigators shall submit a form ID-017, *IRS Disclosure*, to the Board's Disclosure Officer at MIC:54. The Disclosure Officer will submit the form to the Legal Department for signature and then forward to the IRS for authorization (Intranet).

### **POST OFFICE - REQUEST FOR BOXHOLDER INFORMATION** **106.000**

The United States Postal Service has formalized procedures regarding the release of information from post office box applications, and requires the request to be made on agency letterhead directly to the post office branch where the post office box is located. The Board is no longer permitted to fax an informal request to the postal inspectors to obtain boxholder information. A request for post office box information shall be made on form BOE-53.

### **ISSUANCE OF SELLER'S PERMITS FOR ENFORCEMENT PURPOSES** **108.000**

When a Sales and Use Tax permit is required in order to complete an investigation, only an ID supervisor has the authority to request the issuance of a Sales and Use tax permit for enforcement purposes. All requests from an ID supervisor will be sent to the Area Administrator who will, upon approval, forward the request to the Chief. The request should be in memo form and must contain justification supporting the request as well as the information listed below. The Chief will forward the memo to the designated administrative person (DP) for implementation.

The following is the procedure for obtaining any such permit:

#### **SALES AND USE TAX PERMIT(S)** **108.005**

Contact:

The DP will prepare a memo (Exhibit 1) from the Chief to the Tax Policy Division (TPD) contact person requesting that a permit be issued. The memo will be addressed as follows:

(Designated TPD Person)  
Tax Policy Division, MIC: 92

Information to be provided to TPD:

Name

Address - P.O. Boxes may NOT be used as the business address. They may be used as the mailing address only.

Start Date

Telephone Number - This needs to be a legitimate phone number. If the permit is for another agency, the agency needs to supply a legitimate phone number. If the permit is for an ID investigation, a phone number should be secured. This may involve procuring a separate phone line and an answering machine.

Procedure:

- TPD will issue the permit,
- the account will be a sole proprietor account; and,
- the account will be on a yearly filing basis to avoid potential return delinquencies.

*Note: Care should be taken with permits issued in December of any year. The system will produce a return mid-January to account for any activity conducted in December.*

The DP will record all account numbers issued and will set periodic follow-ups on each account to determine if return(s) for the account are needed and if the account needs to remain open. If the permit is no longer needed, the DP who coordinated the issuance of the permit will prepare a memo requesting that the TPD contact person close out the account Did Not Operate. The memo will be from the Chief to TPD with approval lines for the Area Administrator and the Chief. If a return is needed, the DP will e-mail the agent/investigator who took out the permit that a return needs to be filed. The e-mail shall copy the appropriate ID supervisor and the Area Administrator.

The DP will create a file and maintain copies of all approved requests for permits and supporting justification. This file will be separate from the case files.

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## **GENERAL ADMINISTRATION**

### **OTHER TAX PROGRAM PERMIT(S)**

**108.010**

The need for permits or licenses from other tax program areas the Board administers will be addressed on a case by case basis.

### **DELEGATION OF DOCUMENT CERTIFICATION AUTHORITY**

**110.000**

The ID prepares prosecution packages which outline the Board's criminal tax evasion case against a person. Prosecution packages contain copies of taxpayer returns, Board correspondence to the taxpayer, and/or work product of the criminal investigation. Many District Attorneys prefer that the prosecution packages contain copies of the original document certified by an authorized representative of the Board.

The authority to certify copies of original Board documents has been given to the ID Administration's Tax Technician II and the ID Northern Region's Office Technician. Each certified copy must be stamped, "I attest that this is a correct copy of the original document in the files of the State Board of Equalization," signed and dated by the Executive Director's delegate – the ID.

### **REQUESTING CERTIFIED COPIES**

**110.005**

Certified copies of returns and/or account files shall only be requested by ID investigators when requested by the prosecuting District Attorney. The investigator shall e-mail the request to either the ID Administration's Tax Technician II or the ID Northern Region's Office Technician with a copy to the investigator's supervisor as well as the respective supervisor of the ID Administration's Tax Technician II and the ID Northern Region's Office Technician AA. The e-mail shall identify the taxpayer, the taxpayer's d.b.a., account numbers, and the specific documents that need to be copied and certified.

### **LEGAL DEPARTMENT CONTACT**

**112.000**

When a search warrant or prosecution package has been approved by Legal, the Board's Legal Counsel signing the package becomes the contact attorney for that case. In the event the ID investigator requires legal assistance or has questions about a case that requires the involvement of Legal, they shall be addressed to the contact attorney.

If the District Attorney has questions or concerns that need to be discussed with the Board Legal Counsel, the District Attorney shall be referred to the contact attorney. The ID investigator should advise the contact attorney that the District Attorney will be calling and provide whatever assistance (i.e., case file, background history, etc.) is required. Should questions arise prior to a prosecution package being approved by the Legal Counsel, all questions should be directed to the Supervising Legal Counsel.

### **FLAGGING PROBLEM ACCOUNTS**

**114.000**

Once a search warrant has been executed or special circumstances exist, all identified accounts held by the taxpayer(s) shall be flagged. The purpose of the flag is to prevent any action from being taken on that account which might jeopardize ID's criminal prosecution (clearing delinquencies, moving payments, etc.), or place Board staff in a dangerous situation.

When specific IRIS screens relating to these identified accounts are accessed by district or headquarters staff, the screen will display the message "SUPERVISORY REVIEW" with the notation "Flag B" displayed in the upper left-hand corner of the screen.

When district or headquarters staff encounters this message they shall contact their District Administrator or designee who will then contact either the ID Northern or Southern Area Administrator (based on the district indicator) for further information or instructions. District or headquarters staff will not be advised Flag B is used for an ID case.

*Note: The flag does not prohibit the user from accessing the account or making changes. It is simply a warning to check with your supervisor before proceeding with an action on an account.*

### **TIME FOR PLACING FLAGS**

**114.005**

All accounts identified under the search warrant shall be flagged at the time the search warrant is executed. If a search warrant is not necessary, all accounts will be flagged when it is determined that special circumstances exist.

Flags may be placed on an account prior to the execution of a warrant only due to special circumstances. Permission of the appropriate Area Administrator or Chief is required. In these cases, the supervising investigator will prepare a memorandum to the Area Administrator requesting the flag be placed. The memo should include a list of all accounts to be flagged, and a justification.

### **FLAGGING PROCEDURES**

**114.010**

The following steps shall be followed when placing flags on all identified accounts.

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Step	Who	Action
1	Supervising Investigator	<ul style="list-style-type: none"> <li>Identify all accounts to be flagged</li> <li>Prepare and send a memo to the Area Administrator requesting that flags be placed on all identified accounts. Memo is prepared when a search warrant is executed or special circumstances exist on an account. Memo should include justification for placement of flag.</li> </ul>
2	Area Administrator	<ul style="list-style-type: none"> <li>Approve memo and forward to the H drive.</li> <li>Access IRIS. Place the flag on all identified accounts. See section 170.040 for instructions on adding flags in IRIS.</li> <li>If account is already flagged by ISAD see section 170.050.</li> <li>Add the account to the Schedule of Accounts Flagged. Required entries are case number, account name, district of account, account number, date the flag was entered and who requested the account be flagged.</li> <li>Send copy of IRIS flag screen(s) to supervising investigator for investigation file with a copy to the Area Administrator.</li> <li>Send Area Administrators Schedule of Accounts flagged for their review every month.</li> <li>Maintain a chronological file with copies of all flag placement requests and memos sent</li> <li>Review Schedule of Accounts on a monthly basis.</li> </ul>

### REMOVAL OF FLAGS

**114.015**

The flag shall be removed from all identified accounts when the case is closed. For flag removal the supervising investigator will prepare a memo to the Area Administrator advising of the closure of the case and request removal of the flag(s). The memo should include a list of all accounts on which flags are to be removed. The memo will be submitted with the closing report on the case.

The flag may be removed earlier only with the permission of the appropriate Area Administrator or Chief. For early flag removal the supervising investigator will prepare a memo to the Area Administrator requesting early removal of the flag(s), identify all affected accounts and provide a written justification.

### REMOVAL OF FLAGS PROCEDURES

**114.020**

Step	Who	Action
1	Area Administrator	<p><b>Closed Cases</b></p> <ul style="list-style-type: none"> <li>Approve memo and forward with closing report to the Chief.</li> <li>Proceed to step 2.</li> </ul> <p><b>Early Removal of Flag</b></p> <ul style="list-style-type: none"> <li>Approve memo and forward directly to the requesting early removal of the flag.</li> <li>Proceed to step 3.</li> </ul>
2	Secretary to the Chief	<ul style="list-style-type: none"> <li>After case closure is approved by the Chief, forward a copy of the face of the closure report along with the memo to the.</li> </ul>
3		<p>Sales Tax Accounts</p> <ul style="list-style-type: none"> <li>Access the IRIS system. Remove the flag on the account. See section 170.045 for removing flags in</li> </ul>

## GENERAL ADMINISTRATION

		<p>IRIS.</p> <ul style="list-style-type: none"> <li>• Enter the date the flag was removed on the Schedule of Accounts Flagged.</li> <li>• If flagged by ISAD or if ISAD has requested to be notified see section 170.050.</li> <li>• Place copies of all memos regarding removal of flags in chronological file.</li> </ul>
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### PLACING FLAGS IN IRIS

**114.025**

Step	Execution Steps	Expected Results
1	Type <b>Tar BB</b> and the <b>Acct #</b> on the Go-line. Press <b>[Enter]</b> .	Displays the Tar BB screen.
2	Enter the letter <b>B</b> in the action field next to Taxpayer Flag.	
3	Press <b>F5</b>	Flag will be added and affected IRIS screens will display the Supervisory Review message.

The screens listed below will be the only screen on which the Internal Security and Audit Division flag (Flag A) will appear. Also, the following IRIS screens relating to identified accounts have been programmed to display the "Supervisory Review" message when accessed:

AUD MA	DIF DD	TAR AM	AUD MC
PAY BA	REV FB	CTS CM	PAY EA
REV FZ	DIF DA	TAR AI	REV RE

The ID flag (Flag B) may be displayed when the above screens are accessed and also when the following additional screens are accessed:

APL PR	DEL IC	DIF RF	REV RN
APL MH	DIF BN	EFT EB	REV RL
DEL BD	DIF BR	EFT EM	REV RU
DEL DM	DIF NN	REV FW	

The Excise Taxes flag (Flag C) may be displayed on Cigarette and Tobacco Products License (CTPL) accounts and the corresponding Sales Tax accounts when a licensee has been issued a civil citation or criminal misdemeanor citation by ID. The following IRIS screens will display a Flag C when accessed:

CTS AL TAR AM      TAR AI SPR AM      SPR AI

### REMOVING FLAGS IN IRIS

**114.030**

Step	Execution Steps	Expected Results
1	Type <b>Tar BB</b> and the <b>Acct #</b> on the Go-line. Press <b>[Enter]</b> .	Displays the Tar BB screen.
2	Delete the letter <b>B</b> in the action field next to Taxpayer Flag notation.	
3	Press <b>F5</b>	Flag will be removed.

### PREVIOUSLY FLAGGED ACCOUNTS

**114.035**

Both the ID and the ISAD have the ability to flag accounts. The IRIS system will only display one flag at a time. In the event ID needs to flag an account which is already flagged, a memo shall be sent to the supervisor of the Investigations & Disclosure Section of ISAD. The memo shall advise the ISAD of the sensitive nature of the account and request all contacts on this account, other than those relating to internal audit matters, be referred to the ID. ISAD staff will add this notation on their list of flagged accounts.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **PRESS RELEASES**

### **116.000**

The following is a list of procedures that will be used in issuance of a press release:

The investigator will be responsible for preparing the draft press release and obtaining approval from the prosecutor on the day of the conviction. The draft press release will be prepared in standard BOE News Release format (Exhibits 2 & 3).

The following shall be included in the draft press release:

#### Conviction

- The State Board of Equalization announced today (date), who plead or was convicted of how many counts of what crime.
- A brief paragraph about the defendant and the business, the investigating agencies and the amount of tax evaded.
- A description of the plea or conviction, i.e. fines probation, jail sentence etc. (Exhibits 2 & 3)
  1. The press release will be submitted to the immediate supervisor for approval.
  2. The press release will be submitted to the Area Administrator for approval
  3. The press release will be submitted to the Chief of ID for approval.
  4. Once the Chief of the ID approves the draft press release, it will be forwarded to the Communications Officer for preparation of an official document.

After the Communications Office prepares the formal document, the press release is sent to the following for final review: Board Member of the District in which the crime occurred with a copy to:

- the Legal Department
- the Chief of the Investigations Division
- The Chief of the Communications Office

A press release will only be released if the pertinent Board Member gives approval. If approved, the Communications Office forwards the press release to the Distribution center for release to the approved media outlets. There will be no information available on the Board's Web site.

### **INTERNAL CONTROLS**

### **118.000**

The ID recognizes how important it is to establish, maintain, and evaluate internal controls. The internal controls of the ID are set forth in this *Investigations Division Policy & Procedures Manual*.

Supervisors play a key role in making sure that the ID's employees perform their duties in compliance with the policies and procedures of the ID. Supervisors perform this function by diligent review of work products and in-the-field observations. The ID's Area Administrators, the Division Principal Auditor, and the ID Chief also review and approve the work produced by the ID. In addition to these internal reviews, the Board's Legal Division reviews and approves several of the ID's work products.

The ID periodically conducts audits of the internal controls to verify compliance with the ID's policies and procedures. These audits are conducted by the ID's staff with a Business Taxes Specialist II acting as the lead. ID's internal control audits include, but are not limited to, tests of policies and procedures pertaining to criminal case management, conducting inspections, issuing citations, seizing of cigarettes and tobacco products, executing search warrants, preparing prosecution packages, and preparing criminal and civil audits. The reports produced from these internal control audits are used by management as a tool to monitor compliance with established policies and procedures and to take corrective action as needed.

These internal control tests are performed using sampling, observation, and interview methods. The use of these test methods will vary depending on the policy and/or procedure being tested. These tests are based on yes or no answers to questions concerning compliance with key internal controls that are set forth in the *Investigations Division Policy & Procedures Manual* and are of concern to management.

### **ID INTRANET**

### **120.000**

In an effort to improve efficiency, the ID support has established an ID intranet web site for investigators and support staff to access common investigative tools and resources. The ID intranet includes, but is not limited to: ID Forms, Form Letters, Investigative Templates, ID Policies, and more.

## GENERAL ADMINISTRATION

### ID INTRANET

(cont.) 120.000

All standard ID forms on the intranet not requiring modification will remain password protected to prevent accidental modification to the template. The ID recognizes that form revisions are and will continue to be necessary to meet changing program needs. To facilitate a form revision, please submit a mock-up or your proposed form letter template and/or form with a memo describing the business reasons for the proposed change. Area Administrators must approve revisions before they are submitted to the ID Forms Coordinator. Minor revisions do not require a mock-up but must be discussed with Area Administrators, who can forward a request directly to the ID Forms Coordinator.

To establish an ID Intranet short cut on a desktop or laptop computer, go to ID Common on Cboespcinv, open the ID Intranet file folder and send the file named "index" to the desktop. Next, close the file and the explorer window, and locate the Internet Explorer icon named index on your desktop. Right click on the icon and select properties. If not highlighted, select the shortcut tab, and then select change Icon. At the change Icon menu, select the browse button, and navigate to the ID Common on Invdata\_server, ID Intranet file folder and select the ID Icon. Once the ID Icon is on your desktop, you can rename it to "ID Intranet."

### INVESTIGATION DIVISION REPORTS

122.000

A list is available (Exhibit 4) of all the most common required reports, responsible function, reporting due date, last day for the reporting function to update database records, and the recipient(s) of the reports.

Any corrections to a report, or updates to the Investigations Tracking Database, or the Retail Inspection Database made after the designated cut-off date must be reported by the responsible supervisor to their Area Administrator. The Area Administrator will be responsible for contacting the statistic's desk to advice of the late addition(s), deletion(s), or update(s) to ID's databases.

### INVESTIGATOR HOURLY RATE – ID RESTITUTION

124.000

All criminal complaints including all requests for investigative costs related to a criminal prosecution will reflect the hourly rate of \$74.00 per investigative hour. Investigative costs are all investigative hours committed to bringing the criminal complaint to a prosecutor's desk, including ID investigative and criminal audit hours, and California Highway Patrol hours charged to the investigation.

### OUTSIDE AGENCY DATABASE SEARCH PROCEDURE

126.000

Access to the on-line databases of the Department of Motor Vehicles (DMV), the Employment Development Department (EDD), the Franchise Tax Board (FTB), Equifax, and Voter Registration will be restricted and tracked.

The office technicians (searchers) for Northern California and Southern California will be the only people who will be authorized access to these databases. Access to Equifax credit reports and Voter Registration will be limited to only two authorized staff in ID, a BTS I in Northern California and a BTS I in Southern California.

Form ID-610, *Outside Agency Database Search (available on the ID Intranet)*, will be used to track all requests for information from DMV, EDD, FTB, Equifax, and Voter Registration. This form will be prepared and signed by the investigator requesting the search and approved by a supervisor before the search. The searcher will sign the form and retain a copy before returning the original to the investigator with the results. The original will be retained in the complaint or case file. The searcher will retain the copy in a chronological file, which must be retained in a secure area in his/her cubicle for three years.

Investigators in the field may have another investigator prepare the request or call the designated searcher direct; however, a supervisor's approval is still required before the search can be conducted. Upon returning to the office, the investigator must sign any requests that were called from the field.

Notes: when requesting an Equifax credit report, individuals have a right to know who has had access to their personal credit history. Accordingly, in compliance with the Fair Credit Reporting Act, inquiries can no longer be removed from consumer credit reports, including those "made in error." It is imperative that all requests be legitimate and accurate to minimize the number of credit reports requested in error.

The Voter Registration Database is an application that the Board built to house information it receives from the Secretary of State on registered voters. It is a collection tool. The database currently contains year 2001, 2003, and 2007 data. The Board obtains the data every two years (except 2005). The type of data that is available through this database on registered voters in California includes names, addresses, telephone numbers, and date of birth.



## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **OUTSIDE AGENCY DATABASE SEARCH PROCEDURE** (cont.) 126.000

*Voter registration information is considered confidential information (Election Code 2194), except for those eligible to receive the data. As a government agency, the Board is eligible to receive the data; however, the Board must treat the data as it would other confidential information and access it only in the Board's normal course of work.*

### **COMMON CARRIER REPORTS** 128.000

A schedule of common carrier reports is available on the ID Intranet, and can be accessed through a link under "Additional References." This information will be updated with the identification of new common carrier reports on the 15th of each month.

### **INSPECTION ASSIGNMENT DATABASE POLICY** 130.000

All cigarette and tobacco product inspection results will be entered into the "Inspection Assignment Database," located on the ID server. Due to the sensitivity of the information contained within the Inspection Database, access to this database application is limited to Lead Investigative Inspectors, select support staff, Supervisors and ID Management.

### **LEAD INSPECTOR RESPONSIBILITIES** 130.005

The Inspection Assignment Database has been specifically designed to eliminate excessive data entry, and provide greater inspection history detail. It will provide Lead Investigative Inspectors with zone-based assignment selection tools by cities or zip codes to effectively utilize ID staff resources, and to track program results.

This database is not to be copied to any user's hard drive.

By the fifth (5<sup>th</sup>) working day of each month, Lead Inspectors, or designees, are responsible for updating the Inspection Assignment Database with the prior month's inspections. Every inspection resulting in an administrative seizure requires that a complaint be prepared and forwarded to HQ ID. The complaint shall include, at a minimum, copies of applicable registration screens, the ID-016, *Compliance Inspection Report*, ID-609, *Investigations Activity Report*, BOE-1317, *Receipt of Property Seized*, and BOE-1238-ID, *Notice of Seizure and Forfeiture*. All administrative seizure detail (sticks seized, etc.) shall be maintained in the Investigations Tracking System (ITS), which is the responsibility of the Area Administrator.

### **ID-016, CIGARETTE AND TOBACCO PRODUCTS INSPECTION SHEETS** 130.010

ID-016's shall be maintained by each Lead Inspector by month of inspection. It shall be the responsibility of ID Supervisors to review these on a quarterly basis to ensure continuity and consistency in the ID's Inspection Program. ID-016's denoting administrative seizures should also be spot checked against ITS to ensure continuity.

### **COMPLAINTS** 130.015

In addition to complaints initiated as a result of administrative seizures, Lead Inspectors shall receive complaints generated through ID's Intake process for inspections. All complaint files generated and received by the satellite offices shall be maintained by chronological number until the complaint is submitted for closeout. All closed out complaints shall be maintained by the Area Administrator and/or designee responsible for the specific satellite office. ID Supervisors shall be responsible for reviewing all satellite complaint files on a quarterly basis for timeliness in responding to complaints, and adherence to established ID complaint procedures.

### **INSPECTION ASSIGNMENT DATABASE GUIDELINES** 132.000

#### **FORWARD** 132.005

The Inspection Assignment Database was designed to provide Lead Inspectors and Inspectors with a tool to identify potential inspections within their designated service zones, as well as to provide ID Management with a tool to measure inspection program activity. The data contained in the Inspection database is an exact duplicate of data that was extracted from the Board's mainframe data systems to notice retailers of their potential licensing requirement under the Cigarette and Tobacco Products Licensing Act of 2003 (AB 71).

It is the responsibility of each inspection team lead, or designee, to update the database weekly with the previous weeks completed inspection data. This information, in addition to information on complaints and administrative seizures tracked on the ITS, will be used by management to report on the effectiveness of the AB 71 inspection program. This database should not be viewed as the end product, but a work in progress. Additional reports and tools will be developed as needs are identified by inspectors, staff analysts, or other users of the information. Suggestions for improvement are encouraged, and should be routed through appropriate ID supervisors.

The ID maintains the Inspection Assignment Database, and questions related to design and functionality, as well as problems with the database, or accessing the database should be directed to the ID Computer Forensic Expert or to

## GENERAL ADMINISTRATION

### **FORWARD**

(cont.) **132.005**

the ID Northern Area Administrator. Please do not request technical support from the district regarding this application. Access to ID applications is restricted to ID technical support staff. Again, please route all suggestions for improvements or new reports through the appropriate supervisors.

Following are guidelines and suggested roles and responsibilities for Lead Inspectors and Inspectors for using the database.

### **MAIN MENU**

**132.010**

When the application is started from the Local Area Network (LAN), it will present the Main Menu. The Main Menu screen offers the user ~~two~~ three (3) selection tabs: Edit and Search Functions, ~~and~~ Account Selection Reports, and Team Inspection Reports. The Edit and Search Functions tab enables the user to search for specific accounts for the purpose of viewing account information, adding new account information, and updating account records to reflect inspection activity. In addition, this tab menu selection offers a form for adding an inspector to a specific Team/Zone. The Account Selection Reports and Team Selection Report tab enables users to produce printed reports needed for organizing, ~~and~~ scheduling team inspections, and viewing team inspection summaries. These reports include, but are not limited to: Account Selection by City, Account Selection by Zip Code, Cities in Zone, Zip Codes in Zone, Follow Up Inspections Report, etc.

### **EDIT AND SEARCH FUNCTIONS**

**132.015**

The Edit and Search Functions tab currently offers users four options, which may be selected by pointing and clicking on one of buttons titled: Search for Account, Add New Accounts, Update Account, and Add Inspectors. Once activated, each of the account related buttons will evoke a pop-up menu requesting an account number. When an account number is provided, populated forms will pop-up with available data related to the specific account requested.

Following is a brief description of each Edit and Search functions and its intended use.

### **SEARCH FOR ACCOUNT**

**132.020**

Once the "Search for Account" button has been selected, the user will be prompted with two pop-up menus, one requesting a SR account number, and the other pop-up menu requesting a LR account number. Either of these menus can be ignored by hitting the enter key. However, if the enter key is entered for each pop-up menu, the form will return empty. The advantage to these pop-up menus is that either account number can be used to search for and bring up a specific BOE account. These same two pop-up menus activate when selecting any of the account maintenance screens from the main menu Edit and Search Functions tab. Once either of these two pop-up menus is populated with an account number, the form titled "Record Search Form" will appear. It is only good for retrieving records for viewing purposes - no data entry or modification is permitted.

### **ADD NEW ACCOUNT**

**132.025**

Selecting this button option brings up the Add New Account Form. This form requires that the following fields be populated: District Prefix, Account Number, Sub Location Number, Owner Code, Owner, DBA, Business Code, County Code, Tax Area, Start Date, Excise AB 71 License Number, Inspection Zone, Street Address, City, State, Zip Code, and whether or not the retailer sells cigarettes and/or tobacco products at the location. The Alcoholic Beverage Control (ABC) License Field is not a required field. (This information was initially uploaded from data provided from ABC, and is intended to provide the inspector with background information on the sale of alcoholic beverages.)

### **UPDATE ACCOUNT**

**132.030**

The primary purpose of the Update Record Form is to capture information from each inspection, regardless of whether or not an administrative seizure was conducted. In most cases, the Lead or their designee will be querying this form to input data on completed inspections and administrative seizures. Unless the account was previously unidentified, the query will result in a populated form with the exception of the inspection data, which has been highlighted on the left with a bracket. For each inspection conducted by a satellite office, the Lead or their designee must complete this information. For inspections that do not result in a seizure, the minimum required fields are the two check boxes to indicate whether or not cigarette or tobacco products are sold, the Account ID (Account Number), date of inspection and the inspector. If an administrative seizure occurs, then one or more of the check boxes for "Cigarette Seizure, Tobacco Seizure, Unstamped, Counterfeit Stamps, or Other State Stamps" must be checked. This information will be compared against the ID-016 and the BOE 1317. To save the record, the Lead or designee can either press the Stop Sign button (seen in the lower left-hand corner of the Update Record Form), which will close the form or press the "Search for Another Record" button (just above the stop sign button on the "Update

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### UPDATE ACCOUNT

(cont.) 132.030

Record Form"). The "Search for Another Record" button will cause the pop-up menus for specific account information to reactivate, prompting the user to enter a BOE SR or Excise AB 71 account number. At the time the pop-up is reactivated, the current record is automatically saved to the network.

### SUB ACCOUNTS

132.035

When searching for sub-accounts to edit, there are two options. The first option is to scroll through the accounts using the scroll indicator identified with a ↵ symbol and arrow above, located at the bottom of the Update Record Form. The second option is to highlight the "Sub-Number" field with the cursor, select edit from database main file menu, select find (the binocular icon), and the pop-up menu on the left titled "Find in Field: Sub Number" will appear. The short cut for this function in Access is Ctrl F. Once this pop-up menu appears, type the sub number into the "Find What" field, and select the Find First button on the pop-up menu. This will take you right to the sub-location record. Select "Close" and edit the record to reflect inspection data.

### ACCOUNT SELECTION REPORTS

132.040

The "Account Selection Reports" tab is the working tool for the Lead Inspector to identify inspection assignments. This tab currently contains ~~six (6)~~ nine (9) buttons: Account Selection by City, City-Not Inspected with Date, Previously Inspected Accounts by City, Account Selection by Zip Code, Zip Code-Not Inspected with Date, Previously Inspected Accounts by Zip Code; and for zone territory reference, Cities in Zone, Cities in Northern (or Southern) California and Zip Codes in Zone.

### ZIP CODE - NOT INSPECTED WITH DATE

132.045

The most common Account Selection Reports button that will be used by the Lead or their designee for determining inspection assignments will be "Zip Code Not Inspected by Date" button. Placing the cursor on this button and clicking enter will execute two pop-up menus: one menu (Enter Zip Code) to prompt the user for a specific zip code, and the other pop-up menu (Include Accounts Inspected Prior to Date) to prompt the user for a date. The Enter Zip Code pop-up must be filled in with a zip code to obtain a report. The "Include Accounts Inspected Prior to Date" pop-up menu is optional. If a date is entered, then only accounts inspected prior to that date, and accounts that have not been inspected will be generated in the report.

The Accounts Not Inspected or Inspected Prior to a Specified Date report provides a list of every business identified within a specified zip code, the business name, business owner, business code, street address and zone. If previously inspected, the report will also identify whether or not the retailer sells or sold cigarettes or tobacco products.

The seven other buttons of interest on the Account Selection Reports tab are: Account Selection by City, City-Not Inspected with Date, Previously Inspected Accounts by City, Account Selection by Zip Code, Previously Inspected Accounts are by Zip Code, Cities in Zone, Cities in Northern (or Southern) California, and Zip Codes in Zone Report.

Following is a brief description of each of these reports and its intended use:

### ACCOUNT SELECTION BY CITY

132.050

When selecting the Account Selection by City button under the Account Selection Reports tab, the user is prompted with a pop-up menu to insert the desired city. Once the desired city has been inputted and the enter key depressed, the Account Selection by City report will be generated. This report is organized by selected city and street address. The report provides the Permit Number, Owner, DBA, Business Code, Street Address, Zip Code (whether cigarettes and/or tobacco products are sold or not, date inspected, and whether or not a follow up inspection is required) and Zone. This report only filters out closed accounts. All other accounts will populate the report, including previously inspected accounts. This report can provide information, and assist in identifying potential zip codes to select within a specified city.

### CITY - NOT INSPECTED WITH DATE

132.055

When selecting the City - Not Inspected with Date button under the Account Selection Reports tab, the user is prompted with two pop-up menus - one pop-up menu to select the desired city, and the other pop-up menu to specify a date in time for which the user wants to see all prior inspected accounts. Caution should be used when generating this report, as the result may tie up network traffic, and will produce several hundred pages of information. The City-Not Inspected with Date report provides the user with a report organized by City and Street Address, the Permit Number, Owner, DBA, Business Code, Street Address, Zip Code, Zone; whether cigarettes and tobacco products are sold or not - as indicated from a previous inspection, and the date the location was last inspected, and whether or not a follow up inspection is required. The general use of this report is to provide the Lead with an overview of

## GENERAL ADMINISTRATION

### **CITY – NOT INSPECTED WITH DATE**

**(cont.) 132.055**

inspection verses non-inspections within a specified city in their designated zone. Again, depending on the size of the city, this report can generate several hundred pages of information.

### **PREVIOUSLY INSPECTED ACCOUNTS BY CITY**

**132.060**

~~Currently being developed.~~ When selecting the Previously Inspected Accounts by City button under the Account Selection Reports tab, the user is prompted with a pop-up menu to insert the desired city name. This report provides the Permit Number, Owner, DBA, Business Code, Street Address, Zip Code, whether or not cigarettes and/or tobacco products are sold, Date Inspected, and whether or not a follow up inspection is required. This report is organized by city and street address.

### **PREVIOUSLY INSPECTED ACCOUNTS BY ZIP CODE**

**132.065**

When selecting the Previously Inspected Accounts by Zip Code button under the Account Selection Reports tab, the user is prompted with a pop-up menu requesting the desired zip code. Once the zip code has been entered, the report that is generated will provide inspection data organized by city and street within the zip code. Note this report will generate with an error message if no inspections have occurred within the zip code specified by the user. The report includes the Permit Number, City, Owner, DBA, Business Code, Street Address, Zip Code, Zone, whether or not cigarette or tobacco products were sold at the location, ~~and~~ the date inspected, ~~and whether or not a follow up inspection is required.~~ This report can be used to provide Leads with a general overview of how many inspections have been conducted within specified zip code areas, as well as the dates these inspections occurred.

### **CITIES IN ZONE**

**132.070**

The Cities In Zone report provides a breakdown of all of the cities that have been placed into a zone. (Note: in several Southern California inspection zones, several teams may share cities, which have been split up by zip codes.

### **ACCOUNT SELECTION BY ZIP CODE**

**132.075**

When selecting the Account Selection by Zip Code report button, under the Account Selection Reports tab, the user is prompted with a pop-up menu requesting the user to type in the desired zip code. This report is organized by city and street address. The report provides the Permit Number, Owner, DBA, Business Code, Street Address, Zip Code, whether or not cigarettes and/or tobacco products are sold, Date Inspected, and whether or not a follow up inspection is needed.

### **CITIES IN NORTHERN (OR SOUTHERN) CA**

**132.080**

When selecting the Cities in Northern (or Southern) CA report, under the Account Selection Reports tab, the report will be generated. This report provides a listing of each city, the zone, and the number of permits contained within each city.

### **TEAM INSPECTION REPORTS**

**132.085**

This tab currently contains nine (9) buttons: Monthly Team Inspection Activity (Detail), Monthly Team Inspection Activity (Summary), Zone Inspections With Sells Cigarette Flag, Zone Inspections Without Sells Cigarette Flag, Follow Up Inspections Report, Duplicate Inspections Report, Zone Inspection Count By Zip Code, Zip Codes Without Inspections, Account and Inspections Summary.

### **ZIP CODES IN ZONE REPORT**

**132.090**

When selecting the Zip Codes in Zone Report, the user is prompted by a pop-up menu to provide a zone number, for example 1a. This report provides a complete breakdown of each CA zip code assigned to specific zones. The Zip Codes in Zone Report specifically provides a listing of each zip code and the number of permits contained within each zip code assigned to a zone. This information can provide assistance to the Lead and staff in selecting potential zip codes, or zip code groupings to select for team inspections.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **REQUEST FOR REIMBURSEMENT INCURRED FROM A SEARCH WARRANT OR SUBPOENA**

**134.000**

From time to time businesses will request reimbursement for time invested and/or reproduction costs incurred as the result of complying with a search warrant or subpoena.

A criminal search warrant is an order of the court and no costs of reproduction are reimbursable. For a civil subpoena, however, California Evidence Code Section 1563(b)(1) provides for payment of reproduction fees. Conversely, Revenue and Taxation Code Section 30454 of the Cigarette and Tobacco Products Tax Law requires the production of certain reports or information that are not subject to reimbursement, even if a subpoena is issued.

When staff receives a request for reimbursement for expenses incurred for a search warrant or subpoena, the request shall be forwarded to the Chief, or designee, for processing. When approval from the Chief is sought on a subpoena and it is believed that the Board could be responsible for reimbursement of reproduction costs, please make a notation to this fact on the ID-014-A, *Approval and Tracking, form A*.

### **BOE-220-I, ACCOUNT MAINTENANCE/REFERRAL AND BOE-1164, MEMORANDUM OF POSSIBLE TAX LIABILITY PROCEDURE**

**136.000**

#### **INVESTIGATORS/INSPECTORS**

**136.005**

The Investigators and/or Inspectors are responsible for the accurate completion of the BOE-1164 and BOE-220-I as well as forwarding the documents, via their Leads, to their Supervisor in a timely fashion.

#### **LEAD INSPECTORS**

**136.010**

Lead inspectors are responsible for inputting inspection detail, including issuance of a BOE-1164 or BOE-220-I resulting from a compliance inspection.

#### **DIRECT SUPERVISORS**

**136.015**

After review, supervisors will forward the original to the office technician, who will copy and send the original to the district or program area. It is not the Office Technician's responsibility to determine the intended recipient of the BOE-1164's and BOE-220-I's. If the BOE-220-I or the BOE-1164 does not clearly indicate the intended recipient, it will be returned to the supervisor to complete.

#### **OFFICE TECHNICIAN**

**136.020**

~~In HQ,~~ The Office Technician will be responsible for sending the original BOE-220-I or BOE-1164 to the designated district or program area, as well as maintaining the copies by team and by month completed.

### **COLOR BINDERS FOR WORK PRODUCT**

**138.000**

Work products shall be submitted in the following binders:

- |                       |              |
|-----------------------|--------------|
| • Search Warrant      | Grey binder  |
| • Prosecution Package | White binder |
| • Case Close-Out      | White binder |
| • Audit               | Blue binder  |

### **DISTRICT ATTORNEY CONTACT PROCEDURES FOR ISSUING MISDEMEANOR CITATIONS**

**140.000**

Team supervisors and leads shall set up meetings with the misdemeanor intake District Attorney's (DA) office within their respective jurisdictions. During these meetings, supervisors and leads should be prepared to provide background on AB 71, as well as the benefits to the local jurisdiction for pursuing these misdemeanors. Initial contacts should focus on jurisdictions with large population centers, or where compliance seizures are remaining fairly constant.

Specific information needs to be obtained from each of the jurisdictions regarding their misdemeanor intake procedures. To assist the staff in collecting this information, the *Court and Prosecutor Information* form ([Intranet](#)) has been created. This form has been designed to capture court information, as well as information specific to each jurisdiction's misdemeanor intake department, DA documentation requirements, and procedures on scheduling citations for intake.

The *Court and Prosecutor Information* form was designed to capture information which must be input into the ID's Court Information database. Once supervisors and/or leads have met with misdemeanor intake staff and prosecuting

**GENERAL ADMINISTRATION**  
**DISTRICT ATTORNEY CONTACT PROCEDURES FOR ISSUING**  
**MISDEMEANOR CITATIONS**

**(cont.) 140.000**

DA's, it will be the lead's responsibility to update the database with applicable county or city court information, and to forward the completed Court and Prosecutor Information form to Headquarters to the attention of the ID Principal Auditor. This database will remain the responsibility of the lead inspectors to maintain, as it is a resource tool to utilize prior to planning inspections within specific geographic locations/court jurisdictions.

In general, the *Court and Prosecutor Information* form was designed to capture information that will be required to process misdemeanor citations through prosecuting jurisdictions, recognizing that each jurisdiction has unique misdemeanor citation requirements. Both the form and database have been designed to capture jurisdiction uniqueness, as well as commonalties.

Commonalties to discuss with misdemeanor intake staff include, but are not limited to the following: the county's or city's requirement to provide criminal intelligence information, DMV Soundex and printouts, investigator report(s), copies of applicable statutes cited, citation, and cover sheet.

Unique requirements include, but are not limited to: the county's or city's requirement to utilize their own cover sheet; mail or hand deliver the citations to misdemeanor intake; appearance days of the week or specific time blocks, lead time from the issuance of the citation to the date to appear in court, and a requirement to obtain automated reference numbers for each citation through the district attorneys' misdemeanor intake office.

When meeting with county or city intake staff, the ID Supervisors and/or leads should also determine what procedure the county or jurisdiction wants the BOE to utilize, to follow-up on the outcome of the misdemeanor, i.e. guilty, dismissed, reduced to infraction, or nolo contendere. In addition, the ID staff must determine the financial penalties assessed by and paid to the court. Some courts may uphold AB 71 penalties, assess and collect, while other courts may reduce the misdemeanor to an infraction and only assess court fines. In either case, it will be the responsibility of each region's inspection team's lead to obtain this information once the citation has been adjudicated, and report it to the ID's Administration ~~Administrative Assistant~~ Citation Tracking Database Operator (CTDO). Once received, this information will be entered into the ID Citation Tracking Database, attached to the Headquarters' copy of the citation and forwarded to the Excise Taxes and Fees Division for input into the new IRIS criminal citation tracking system.

**OBTAINING DMV ENGRAVED PHOTOS**

**142.000**

To obtain DMV fully-engraved driver license photographs, ID staff is required to complete the ID-610, *Outside Agency Database Search*, pursuant to current Outside Agency Database Procedures. Following are some additional steps required for requesting driver license photographs from the DMV.

**LIMITED PEACE OFFICERS (LPOs)**

**142.005**

LPOs are required to include on the ID-610, the reason for the request (tax fraud investigation or criminal citation), the subject's full name (first, middle and last), and the subject's driver license number. The ID-610 must also include the criminal citation number, or case number (no photographs will be authorized for routine complaints without the signed approval of the Area Administrator), and must be signed by the LPO and the LPO's Supervisor.

**DESIGNATED OFFICE TECHNICIANS**

**142.010**

ID-610's may include requests for information in addition to DMV Driver License Photographs. When obtaining an ID-610 that has a request for an Outside Agency Database Search, designated Office Technicians shall copy the ID-610 and forward the copy to the HQ Property Controller II. The HQ Property Controller II is the ID's designated liaison between ID and DMV. To expedite the process for Southern California staff, signed copies of the ID-610 may be sent by facsimile to the Property Controller II.

**PROPERTY CONTROLLER II**

**142.015**

Upon receipt of an ID-610, the Property Controller II will verify that the Investigator and the Investigator's Supervisor has signed off the ID-610, it contains a citation or case number (if complaint number then the ID-610 must also have the approval of the Area Administrator), and contains applicable information required by DMV to initiate a DMV photo request. As a general rule, DMV photo requests will be processed upon receipt of the ID-610. Upon receipt, the Property Controller II will order the photos from DMV.

DMV will mail the photos to the Property Controller II. Receipt of DMV photos could take from seven (7) to ten (10) days from the date ordered.

Once engraved photographs have been obtained from DMV, the Property Controller II shall handle requests for case and citation photographs as follows.

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## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **PHOTOGRAPHS OBTAINED FOR CRIMINAL INVESTIGATION** **142.020**

Photographs for cases shall be placed in a sealed brown envelope addressed to the authorizing Supervisor, marked confidential. Case photographs destined for Southern California shall be sent via the gray bag.

Photographs for citations shall be forwarded to the California Law Enforcement Telecommunications System (CLETS) searcher for inclusion with the citation prior to forwarding the copies of the citation, investigative report and the BOE-1317 to the Citations Tracking Database Coordinator. The DMV driver license photograph, along with the CLETS report shall be returned directly to the LPO.

The Property Controller II shall initial each ID-610 that resulted in obtaining a DMV photo, and shall maintain a log book of each ID-610 in chronological order by requesting office. For DMV photo requests that result in "No Photo Available," the Property Controller II shall visibly mark on the ID-610 "No Photo Available."

### **RETAILER'S IDENTIFICATION VIA THUMBPRINT** **144.000**

Under AB 71's licensing requirement, if an individual is in violation, a criminal or civil citation shall be issued pursuant to Business & Professions Code Sections and Revenue and Taxation Code Sections.

Prior to issuing a criminal citation, the LPO shall request the owner of the business to provide picture identification. This identification will be used to fill out the citation. If the owner does not provide picture identification, then the LPO shall request a thumb print of the owner. This thumb print should be placed on the backside of the BOE copy of the criminal citation. Note: only the owners or partners of the business are to be thumb printed. Persons in control of the business that are not the owner or partner shall not be thumb printed.

Each LPO will be issued ~~two~~ one (1) thumb-printing pads. Additional pads may be obtained from the Property Controller II in HQ. Instructions:

1. Dry the thumb or finger.
2. Touch finger or thumb to TOUCH SIGNATURE pad, then to the document. USE LIGHT PRESSURE ONLY!
3. Rub fingers together to eliminate any residue or use damp washcloth on finger.
4. Keep pad cover closed when not in use to prevent dust from settling on the surface of the pad.

### **STORAGE OF CONFIDENTIAL INFORMATION** **146.000**

All work that contains confidential taxpayer information ~~the is electronic~~ should be stored on the network. ~~Confidential information includes all tax information and personal data, whether received on or as electronic paper or other media should be considered confidential unless it is specifically defined as public information through statute, rule or regulation. If it is necessary to store confidential taxpayer information on other media such as a floppy drive, CD, or thumb drive, the media should be stored in a secure place. An example of a secure place would be a locked drawer or cabinet. When traveling on business, the media should be kept on your person or stored in a secured compartment.~~

See BEAM, Party VI, Information Management Technology, <http://eboe/admin/infosecurity/iso>, or <http://eboe/eboe3/training/disclosureMenu/Security Awareness> for additional detailed information.

### **INSPECTION COMPLAINTS** **148.000**

Investigators are expected to conduct themselves in a professional, respectful, and ethical manner at all times. If, however, a business owner believes that the conduct of an investigator during the performance of his or her duties was improper, the business owner may contact the ID to file a complaint against the investigator. These complaints may be received through the ID's main telephone line or in writing. When received by the ID, they should be directed to the inspection complaint staff assigned to these types of complaints.

### **COMPLAINT TYPES** **148.005**

Type I: These are less serious in nature and will be handled by the ID following the process outlined below. The complaints may include allegations of:

- Policy or procedure violations
- Trespassing
- Property damage during the course of the inspection
- Improper action by an investigator (e.g. disagreements with policies or procedures by the taxpayers)
- Being disrespectful of the taxpayers or their personal property

## GENERAL ADMINISTRATION

### COMPLAINT TYPES

(cont.) 148.005

Type II: These complaints are more serious in nature and will be referred to the ISAD or the Taxpayers' Rights and Equal Employment Opportunity Division (TRAO/EEO). They may include allegations of:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Excessive force</li> <li>• Misuse of badge</li> <li>• Sexual harassment</li> </ul> | <ul style="list-style-type: none"> <li>• Verbal/Physical threats</li> <li>• Discrimination</li> <li>• Theft</li> </ul> |
|---|--|

### COMPLAINT PROCESS

148.010

The following chart lists the ID's process for handling complaints. All inspection complaints should be processed within 15 work days.

Who	Action
Investigator	<ul style="list-style-type: none"> <li>Refer the business owner who has a complaint relating to an inspection to your supervisor.</li> </ul>
Chief's Secretary	<ul style="list-style-type: none"> <li>Make entries in log book of all inspection complaints received by the ID.</li> <li>Direct calls or written inspection complaints to designated ID staff.</li> <li>Document transfer of Type II complaints to ISAD or TRAO/EEO.</li> <li>Create and maintain confidential inspection complaint files.</li> <li>File and document closed complaints.</li> </ul>
ID Supervisors	<p>Supervisors will be the first line of contact for complainants.</p> <ul style="list-style-type: none"> <li>Complaints may be received either by telephone or in writing.</li> <li>All inspection complaints must be tracked. If supervisors are contacted directly by a complainant, they should notify the ID Chief's secretary so she can log in the complaint.</li> </ul> <p>TYPE I</p> <ul style="list-style-type: none"> <li>Try to resolve by telephone. A simple explanation of the law or procedures may be all that is required to resolve the complaint.</li> <li>If complaint resolved by telephone, prepare a memo to the Chief. The memo should:                             <ul style="list-style-type: none"> <li>State the problem (contentions).</li> <li>Summarize discussion with complainant (findings/ analysis).</li> <li>Describe how complaint was resolved (action taken) (Exhibit 5/6).</li> </ul> </li> <li>Submit the memo to the Area Administrator for initial review and signature. The Area Administrator will then forward to the Chief for approval and signature.</li> <li>Prepare a brief undated, unsigned letter to complainant recapping the discussion and include it in the memo package to the Area Administrator for review.</li> <li>If complaint cannot be resolved to complainant's satisfaction by telephone discussion, let complainant know that the ID has an internal process for handling inspection complaints and that you will refer the complaint there. Refer complaint to the inspection complaint staff.</li> <li>If complainant prefers the complaint be handled outside of the ID, provide complainant contact information for TRAO/EEO or ISAD.                             <ul style="list-style-type: none"> <li>Prepare a memo to the Chief to document that complainant was provided contact information for TRAO/EEO or ISAD. The memo should include business contact information, issue(s), and investigator involved. Submit to the Area Administrator for initial review who will forward to the Chief.</li> </ul> </li> </ul> <p>TYPE II</p>



## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

	<ul style="list-style-type: none"> <li>• Prepare a memo for Chief's approval (Exhibit <u>7</u>) referring the complaint to TRAO/EEO or ISAD. Include business and contact information, issue(s), and investigator involved. Submit to the Area Administrator for initial review.</li> <li>• Prepare a transmittal memo from the Chief's signature (Exhibit <u>7</u>).</li> </ul>
Area Administrator	<ul style="list-style-type: none"> <li>• Review/sign Type I and II inspection complaint memos prior to forwarding to the Chief.</li> </ul>
Inspection Complaint Staff	<p>Upon receipt of the complaint-</p> <p><b>TYPE I</b></p> <ul style="list-style-type: none"> <li>• Contact the complainant by telephone to discuss and resolve complainant's issue(s).</li> <li>• If complaint resolved by telephone, prepare a memo to the Chief. The memo should: <ul style="list-style-type: none"> <li>• State the problem (contentions)</li> <li>• Summarize discussion with complainant (findings/ analysis)</li> <li>• Describe how complaint was resolved (action taken) (Exhibit <u>5/6</u>).</li> </ul> </li> <li>• Submit the memo to the Area Administrator for initial review and signature. Administrator will then forward to the Chief for approval and signature.</li> <li>• Prepare a brief undated, unsigned letter to complainant recapping the discussion and include it in the memo package to the Area Administrator for review.</li> <li>• If complainant prefers the complaint be handled outside of the ID, provide complainant contact information for TRAO/EEO or ISAD.</li> <li>• Prepare a memo to the Chief to document that complainant was provided contact information for TRAO/EEO or ISAD. The memo should include business contact information, issue(s), and investigator involved. Submit to the Area Administrator for initial review.</li> </ul> <p><b>TYPE II</b></p> <ul style="list-style-type: none"> <li>• Prepare a memo for Chief's approval (Exhibit <u>7</u>) referring the complaint to TRAO/EEO or ISAD. Include business and contact information, issue(s), and investigator involved. Copy Area Administrator.</li> <li>• Prepare a transmittal memo from the Chief's signature (Exhibit <u>7</u>).</li> </ul>
Chief	<ul style="list-style-type: none"> <li>• Review Type I memos for approval of action taken, sign off, and forward to Secretary to log out and file. (Note: unsigned, undated letter to taxpayer should be dated, signed, and mailed to the complainant by the originating supervisor after the Chief has signed off on the complaint package.)</li> <li>• Review and sign Type II memos to transfer inspection complaint to TRAO/EEO or ISAD.</li> <li>• Review inspection complaint log on a monthly basis to ensure timely action is being taken on all complaints (within 15 work days).</li> </ul>

### IDENTIFICATION OF REIMBURSEMENT FOR INVESTIGATIVE AND PROSECUTION COST

**150.000**

Revenue and Taxation Code section 30482 allows the Board to seek recoupment of costs incurred during cigarette and tobacco products criminal investigations. All reimbursed monies are to be transmitted to the Treasurer who shall deposit it to the State Treasury and credit it to the Cigarette Tax Fund. In some cases, judges may also allow the Board to seek recoupment of costs incurred during criminal investigations under various other programs administered by the Board, including the Sales and Use Tax Law and Motor Vehicle Fuel Tax Law.

Investigative costs are all investigative hours committed to bringing the criminal complaint to a prosecutor's desk, including the ID investigative and criminal audit hours, and CHP and/or DOJ hours charged for investigation.

Staff shall follow the guidelines below when the Board's investigative costs are awarded and payments are acknowledged from the following programs.

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## GENERAL ADMINISTRATION

### SALES AND USE TAX

150.005

The investigator must prepare a memorandum to Special Procedures from their Supervising Investigator. The memorandum shall request the reimbursed investigative costs be transferred to “cost of collection” and shall request a Special Procedure (SPE) hold on the payment paid by the taxpayer. The memorandum must explain the reason for the request, the account number, the taxpayer’s name, the amount to be transferred, and that the monies are identified as Investigative Costs (INV) (Exhibit 8). A copy of the court order or plea agreement referencing the investigative cost must be included.

### CIGARETTE AND TOBACCO PRODUCTS TAX

150.010

The investigator must prepare a memorandum to Excise Taxes and Fees Division from their Supervising Investigator. The memorandum shall request that the reimbursed investigative costs paid by the taxpayer be transferred to account number CF ET 02-010000, Cigarette Seizure Fund. The memorandum must explain the reason for the request, the account number, the taxpayer’s name and investigative costs amount (Exhibit 9). A copy of the court order or plea agreement referencing the investigative cost must be included.

### MOTOR VEHICLE FUEL TAX

150.015

The investigator must prepare a memorandum to the Fuel Industry Section from their Supervising Investigator. The memorandum shall request the reimbursed investigative costs paid by the taxpayer to be identified as Investigative Costs. The memorandum shall explain the reason for the request, the account number, the taxpayer’s name and the investigative costs amount (Exhibit 10). A copy of the court order or plea agreement referencing the investigative cost must be included.

### AFTER A CITATION (CIVIL OR CRIMINAL) HAS BEEN SUBMITTED TO THE EXCISE TAXES DIVISION

152.000

#### FOLLOWING UP

152.005

On a monthly basis, the Citation Tracking Database Operator (CTDO) will review the ID-Citation Database for pending citations. Pending citations are those that were sent to the Excise Taxes and Fees Division (ETFD) but for which an outcome has not been entered onto the ID-Citation Database.

The CTDO will then look up the citations on IRIS to determine what the outcome for these citations were, and enter this information into the database. In the instance where there is no record of the citation on IRIS, the CTDO will follow up directly with the ETFD to verify they received a copy of the citation, and that there will be pending action.

On a monthly basis the CTDO will also print a report from IRIS showing all of the citation activity, by agency, for that period. The citations written by the Board on this report will then be compared to the total citations written by the ID Division. This report should equal the total citations issued by the ID, less the number of criminal citations dismissed or not acted on. Any discrepancies must be accounted for in a written report.

### CITATION BOOK CONTROLS

154.000

#### CONTROL

154.005

The Chief of the ID has designated the HQ Evidence Custodian as the Citation Book Custodian (CBC). The CBC will maintain an adequate supply of citation books, will store the supply in a locked storage location, and will be responsible for the blank citation books until assigned. Reordering will be accomplished by the CBC e-mailing a designated ID administrative staff person with the citation books needed (BOE-56, BOE-57, BOE-98, or BOE-99), the date the citation books are needed, and how many are needed. The lead time for reordering is approximately eight weeks. The sequence and quality of the new books should be checked immediately upon receipt by the ID Administrative staff person.

### ISSUING CITATION BOOKS

154.010

The CBC will maintain the *Citation Book Control Log* and as the citation books are assigned, the CBC will record the citation numbers, the date assigned, and the name of the LPO to whom assigned. An e-mail message will be sent to the LPO’s supervisor, with a cc: to the Lead, Administrative Assistant, LPO, and Area Administrator, notifying him or her that the citation book(s) has been assigned and mailed out to the LPO’s supervisor.

The LPO receiving the citation book will acknowledge receipt of the book by signing and returning to the CBC the *Acknowledgement* memo and *Citation Book Control Log* will be filed in a file drawer in a folder marked “Citation Books Not Complete” by an ID administrative staff person. As the LPO issues the citations, the ID copy of the receipts will be attached to the *Acknowledgement* memo in numerical order.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### **ISSUING CITATION BOOKS**

(cont.) **154.010**

When all the citations in a book are complete, the ID administrative staff person will show the date completed on the face of the *Acknowledgement* memo and will notify the CBC so that the CBC can record the completion date on the *Citation Book Control Log*. The ID administrative staff person will verify that all citations are accounted for and then file the receipts in the section of the file marked "Completed Citation Books." This file will then be transferred to the Chief's secretary. When the file becomes full, the citation books will be transferred to storage to be retained for a period of one year (plus current month).

### **REISSUANCE OF CITATION BOOKS**

**154.015**

Occasionally a partially completed citation book will be turned in by a reassigned, retiring, etc., LPO. The partial book must be reentered on the *Citation Book Control Log* and reissued by the CBC. To accomplish this, the ID administrative staff person will remove the *Acknowledgement* memo from the file. The ID administrative staff person will give the *Acknowledgement* memo to the CBC who will enter on it "Numbers \_\_\_\_\_ to \_\_\_\_\_ reassigned to \_\_\_\_\_, date \_\_\_\_\_." The LPO receiving the partially used citation book will acknowledge receipt by signing the *Acknowledgement* memo. The CBC will then give the *Acknowledgement* memo back to the ID administrative staff person.

### **SECURITY OF ISSUED CITATION BOOKS**

**154.020**

When the CBC issues citation books to LPOs, the LPOs are responsible for the security of their books. LPO issued a citation book must keep their books locked in their work area or in their possession. Citation books must never be left on top of desks or counters, or placed into desks that do not lock. It is incumbent upon the LPO to use the same level of care to protect the citation books outside the workplace. If a citation book or an individual citation is missing, the supervisor is to be notified immediately.

### **LOST OR STOLEN CITATION BOOKS**

**154.025**

The LPO should report lost or stolen citation books immediately to his/her supervisor. The Area Administrator should then direct a memorandum to the Chief advising of the loss or theft, with a copy to the Chief Counsel. The memorandum should name the LPO to whom the book was issued, the date lost, the inclusive numbers of the unused citations, and description of conditions leading to the missing book and a recommendation by the Area Administrator on how future occurrences of this type could be avoided.

### **UNUSED CITATIONS**

**154.030**

The first working day of each quarter, the LPO will prepare and turn in Forms ID-500, *Unused Citations*, (Intranet) to their supervisor.

The supervisor will forward the original copies of ID-500 to be sent to the ID Principal Auditor for dissemination to the appropriate staff member by the 5th of the month for additional verification and retention. At this time, the ID administrative staff person should check used and unused citations for continuity. The ID administrative staff person will then check the used citation for:

1. Sequence
2. Preparation
3. Date
4. Signature

When ID-500 forms are received and all unused and undistributed citations are accounted for, each ID office, for control purposes, should summarize the totals on ID-500, and submit it to the their Area Administrator. The Area Administrator should retain all copies of ID-500.

Should any irregularity be detected in the sequence of citations, used or unused, the Chief should be notified immediately.

### **TRACKING TRANSCRIPTION COSTS**

**158.000**

#### **TRANSCRIPTION SERVICES**

**158.005**

The ID uses transcription services to obtain transcripts of interviews with witnesses and defendants for felony tax evasion investigations. The ID receives a yearly budget for this service; therefore, transcription costs will be tracked on a monthly basis. Consistent and accurate tracking will ensure that the ID is utilizing this resource effectively and efficiently.

## GENERAL ADMINISTRATION

### TRACKING PROCEDURES

158.010

A spreadsheet shall be maintained on a fiscal year basis by the Administrative Assistant (AA); spreadsheet title, "Cost for Services Report". The spreadsheet will show the date of request, investigator requesting the service, timeframe for completing the transcription, ( i.e., same day service, next day, 3-7 days; timeframe determines charge for service), case name and number, number of pages transcribed, transcription cost, and the remaining balance available. The AA will update the spreadsheet by the 10th of each month for the prior month's service. In addition, the AA will forward a file copy of the service report to the Chief and the Area Administrators, quarterly for the first three-quarters of the fiscal year and monthly during the last quarter.

The following steps shall be followed for processing transcription tapes and for completing the spreadsheet.

Step	Who	Action
1	HQ AA	<ul style="list-style-type: none"> <li>At the start of the fiscal year, secure the total dollar amount available for transcription services from the Chief.</li> <li>Enter this amount on the "Cost for Services Report" as the starting balance.</li> </ul>
2	Lead Investigator  Area Administrator	<ul style="list-style-type: none"> <li>Prepares a memo and a <i>Transcription Request</i> form to the AA requesting approval for the transcription service. (Exhibits 11 and 12)</li> </ul> <p>Include on the transaction request form:</p> <ul style="list-style-type: none"> <li>Case Number</li> <li>Timeframe for Completion, and</li> <li>Any Special Instructions.</li> </ul> <ul style="list-style-type: none"> <li>Reviews the request and determines the need for the service. Upon approval, the request is forwarded to the Chief for approval.</li> <li>Forwards the request form, tape for transcription, and memo to the <del>Executive Secretary</del> AA for the Chief's review and final approval.</li> </ul>
3	<del>Executive Secretary</del> AA	<ul style="list-style-type: none"> <li>After the Chief has approved the transcription request, make a photocopy of the approved request for the Chief's files and forward the approved request form, tape, and memo to the AA.</li> <li>Make arrangements with the transcription service to pick up the request form and tape. In addition, send a photocopy of the approved transcription request to the Area Administrator.</li> <li>Will track the request and enter the following information on the "Cost for Services Report": (Exhibit 13) <ul style="list-style-type: none"> <li>Date of the Request</li> <li>Lead Investigator (Requestor)</li> <li>Requesting Unit Number</li> <li>Case Name and Number</li> </ul> </li> </ul> <p>(Note: Depending on the unit requesting service, in the Requesting Unit column, enter unit code 326 for headquarters, unit code 327 for Riverside, or unit code 328 for Norwalk.)</p>

## GENERAL ADMINISTRATION

### FIELD OFFICE VISITS 164.000

#### ID EMPLOYEES VISITING FIELD OFFICES 164.005

A visiting ID employee must report to the reception area of the district office and show their ID issued badge. The receptionist will contact the ID lead inspector, the ID office technician, or contact person of that office. The lead inspector, designee, or contact person must report to the reception area to escort the visiting ID staff. The visiting ID staff has to wear their ID issued badge at all times.

#### ID BADGES 164.010

All field ID staff will be issued ID badges. The badge will have the person's name, photograph, badge number, and authorization date.

### DESTRUCTION OF CONFIDENTIAL MATERIALS 166.000

The Norwalk and Riverside offices of the Investigations Division (ID) currently have confidential shred recycle bins that are separate from the District office's bins. As such, the Norwalk and Riverside ID offices have their own service contracts with shredding companies to destroy confidential material.

When a contracted shredding company arrives to collect and destroy confidential material, an ID staff member will follow the contractor while he/she collects the materials in the office. Once the materials are collected, the ID staff member will continue to follow the contractor to their shredding vehicle to witness the material being destroyed. The ID staff member will sign the contractor's packing slip/receipt, verifying that they witnessed the destruction. The following is required on a receipt from the contractor:

1. Location of service
2. Board contact and telephone number
3. Number of bins serviced
4. Pounds of materials destroyed
5. Date of service
6. Start and end times of service
7. Authorized contractor's representative and Board contact signatures

Some receipts are not preprinted to cover all of the items above. If this is the case, the ID employee witnessing the destruction handwrites the missing information on the receipt.

Some vendors do not have a scale to weigh the material to be shred. However, the vendor usually knows how much a full bin will hold - X number of pounds of material. An approximation can be made based on this information (i.e., half the bin was full, half the amount of pounds were shred).

#### PACKING SLIP/RECEIPT FOR SERVICES 166.005

Once the shredding is complete and the receipt is received by the ID staff member witnessing the destruction, the original receipt will be provided to the appropriate office technician in their respective office (Riverside or Norwalk). The office technician will send the original receipt to the ID's Administration Section. Prior to sending the original, the office technician will make a copy of the receipt for their office and write the date the original was sent to ID's Administration Section. Copies are to be kept in Riverside and Norwalk for the current fiscal year. Originals are to be kept by the Administrative Assistant in headquarters for the current and previous fiscal years.

Copies of the packing slips/receipts obtained by the Administrative Assistant are to be made and sent to the Records Management Coordinator, MIC: 93, Policy, Planning and Evaluation Division once a month.

### OUTGOING CORRESPONDENCE 168.000

These procedures are to be followed for all outgoing correspondence with taxpayers and/or their representatives.

For a detailed line-by-line guide to letter writing, or for any grammar questions, see "Writing Resources" section of eBOE.

#### LETTERHEAD 168.005

All letters will be composed on current Board letterhead. The template for the most current version of Board letterhead is available on the ID intranet, form ID-488. The originator of the letter must update the address, telephone number, and fax number in the upper left-hand corner of the letterhead by using the drop-down menus available.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **SALUTATIONS 168.010**

Use a colon following the salutation. The salutation Dear Name (e.g., Dear Mr. Robinson:) should be used. Use the addressee's whole name if the gender of the correspondent is unknown. Do not guess as to Mr. or Ms.

Use "Ladies and/or Gentlemen" when addressing a letter to a company (SUTD's Guide to Formatting Correspondence[found on eboe]). In addition, when sending notices of legal action (including amended BOE-1317's) to corporations, a copy of the correspondence must be sent to the business mailing address, as well as the Agent for Service identified by the Secretary of State.

### **ACCOUNT NUMBER(S) 168.015**

If the business is licensed with the BOE, an account number *must* be referred to in the correspondence.

### **SIGNATURE 168.020**

Any correspondence to the public will include the signature, typewritten name, and working title of the authorized signor (CPPM 150.010).

### **APPROVAL 168.025**

As a reminder, all outgoing correspondence to taxpayers or their representatives must be reviewed and approved by a supervisor. Supervisors shall be cc'd and forwarded a copy once the original letter is completed and mailed.

All memos addressing legal questions, must go through the formal clearance process (immediate supervisor and area administrator) and be approved by the ID Chief.

### **ANTI-PIRACY 170.000**

Whenever ID staff is visiting a business establishment and suspected pirated movie and music merchandise is observed for sale, staff is to make a referral of this criminal matter to the local law enforcement agency. Staff's referral is for the purpose of supporting local law enforcement agencies in their efforts to enforce anti-piracy laws. Form BT-1164 should be sent to the district office when the referral is initiated.

### **REQUEST FOR PERMIT VERIFICATION 172.000**

Other governmental agencies occasionally contact ID to request verification of the permit(s) of a party they are investigating. This is the agency's due diligence to determine if the party is properly registered with the Board for the activities the party is conducting.

ID will assist the agency by providing the requested verification of permits. The Chief's administrative staff is designated to handle these requests. Any request for verification of permits is to be forwarded (via email or memo) to the Chief's secretary for assignment to appropriate staff. The Chief's staff will provide a letter with the information to the requesting agency.

### **STATE POOL VEHICLES 174.000**

Staff is responsible for obeying all traffic laws while driving state vehicles on state business. Employees will be responsible for any vehicle code violations/citations that occur while he/she is in control of the vehicle (parking, speeding, impound, etc.).

See the Board's Travel Guide and Travel Memo #51 for detailed information.

## **INFORMANT MANAGEMENT**

### **176.000**

#### **GENERAL 176.005**

As discussed below, the terms, informant, source and source of information have similar meanings and are used interchangeably, except when otherwise specified.

#### **INFORMANT 176.010**

An informant or "source" is a person who assists in an investigation by providing information. The informant/source may be acting only out of a sense of duty to help apprehend violators without regard to personal gain. This kind of informant is known as a "citizen informant." Some informants generally referred to as "paid confidential informants" provide information in exchange for money, while other informants provide information in exchange for leniency in pending criminal matters in which they have been charged with a crime.

## GENERAL ADMINISTRATION

### SOURCE OF INFORMATION

176.015

A "Source of Information" (SOI) is a person or organization not under the direction of an investigator. A source of information furnishes information without compensation and will not take an active part in an investigation. When sources of information seek compensation in exchange for information they provide, or become an active part of an investigation, their status changes to confidential informant.

### CONFIDENTIAL INFORMANT

176.020

A "Confidential Informant" (CI) is a person under the direction of a specific investigator giving information or other lawful assistance on criminal activity. Confidential informants participate actively in investigations and/or receive compensation for information. ID's policy currently is not to use confidential informants.

### PROTECTING THE IDENTITY OF SOURCES

176.025

The ID will attempt to maintain the confidentiality of a source's identity whenever possible, and the source requests to remain anonymous. The defendant's constitutional right to confront his/her accusers imposes a legal restriction on law enforcement's efforts to maintain the confidentiality of a source's identity. The general guideline is that confidentiality can be maintained if the informant/source was used in the early stages of a case, for example, at the reasonable suspicion stage, but not at the probable cause stage. The confidentiality of the source's identity also can be maintained if the source is not required to be a witness at trial. In some situations, however, the court may order the prosecutor or the Board to identify the informant/source.

### MANDATORY PROCEDURE FOR HANDLING SOURCES OF INFORMATION

176.030

1. Investigators shall make reasonable efforts to independently corroborate information obtained from an SOI to ensure that the SOI is not required to testify in court; however, staff shall inform the SOI that the necessity of "in court testimony" or "disclosure" is a possibility.
2. Investigators shall meet with an SOI in places that do not expose the SOI to being recognized.
3. A second investigator or law enforcement person will be present at all meetings with an SOI.
4. Investigators shall make all efforts to protect the SOI's identity, if the SOI has requested that his or her identity to remain anonymous, including the following measures:
  - a) do not include the source's name and any information that may identify the source in the notes and documents in the case file;
  - b) do not release the name of the SOI to anyone who does not need to know (this may include law enforcement personnel); and,
  - c) advise the prosecutor and legal staff that the SOI's identity is confidential to ensure confidentiality. This does not mean that it is necessary to disclose the SOI's identity to either the prosecutor or legal staff.
5. Do not solicit or direct an SOI to provide/collect specific information, or request that he/she assist in any part of the investigation.

### INFORMATION REQUESTS FROM THE CALIFORNIA STATE LOTTERY COMMISSION

178.000

From time to time, the California State Lottery Commission (Lottery Commission) requests documents from the Board relating to violations of the California Cigarette and Tobacco Licensing Act of 2003 (AB 71) contained in the Investigation Division (ID) files of licensees. The Board does not currently have an exchange or release of information agreement with the Lottery Commission. Even though some Lottery Commission staff have peace officer status per Penal Code Section 830.3, this section does not authorize the Board to disclose confidential information to their staff. The Governor's order allowing the Board to disclose confidential information to various law enforcement agencies only covers requests made by "any city attorney, district attorney, chief of police, county sheriff, United States Attorney, or an authorized and properly identified representative of the above, located within the state, in connection with any criminal or civil fraud, or unfair competition investigation or case." The Legal Department has determined, however, that since the licensee's lottery application included in the request contains a signed waiver authorizing the Lottery Commission to obtain confidential information maintained by any other federal and/or state agency, then any information the Board has regarding the licensee and AB 71 violations may be released to the Lottery Commission.

When a request is made by the Lottery Commission, the following procedures will apply:

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

Step	Who	Action
<u>1</u>	<u>Disclosure Officer</u>  <u>ID</u>	If the Disclosure Officer receives the initial request from the California Lottery Commission, he or she will forward the request to ID for processing. ID could also directly receive a request, either in writing or via a telephone call. All requests shall be directed to the designated ID Administrative Assistant.
<u>2</u>	<u>ID Administrative Assistant</u>	Make copies of all the documents in the cigarette and tobacco licensee's file for review by the ID administrative person. Log, assign, and provide the copies and the request to the designated ID administrative person for review.
<u>3</u>	<u>ID Administrative Person</u>	Review the request and determine whether the documents are acceptable for release without further review by the Disclosure Officer. If the documents are found to be acceptable, prepare and send a letter to the requesting Lottery Commission agent along with the copies of the releasable documents. If the documents are found to be unacceptable for ID to approve, the file is forwarded to the Disclosure Officer for instructions.
<u>4</u>	<u>Disclosure Officer</u>	Review the documents found to be unacceptable by ID and advise the ID Administrative Assistant which documents are
<u>5</u>	<u>ID Administrative Assistant</u>	In accordance with the advice received by the Disclosure Officer, prepares and sends a letter to the requesting Lottery Commission agent along with the copies of the releasable documents.



## Memorandum

To : , Manager  
Tax Policy Division  
MIC: 92

Date :

From : , Chief  
Investigations Division, MIC:42

Subject : Issuance of Seller's Permit for Enforcement Purposes

Please issue a Sales and Use Tax permit for enforcement purposes to the following:

Name:	John Doe, drivers license #U1111111
d.b.a.:	Eastwest Trading
Address:	12534 Valley View Street Garden Grove, CA 92845
Start Date:	7/1/01
Telephone:	(909) 369-5068

Please take all steps to maintain the confidentiality of the above information. The Investigations Division will inform you when this account is no longer needed. In the meantime, if any problems come to your attention, please contact us immediately. Thank you for your cooperation with this matter.

GH:mb

cc: , Area Administrator  
Southern Region, Investigations Division

, Area Administrator  
Northern Region, Investigations Division

# NEWS RELEASE

STATE BOARD  
OF EQUALIZATION

450 N Street  
Sacramento  
California 95814

FOR IMMEDIATE RELEASE

NR# 32-G

Date: May 3, 2005

Contact: Anita Gore

Communications Office

(916) 327-8988

Website: <http://www.boe.ca.gov>

## **SAN FRANCISCO BUSINESSMAN FOUND GUILTY OF FELONY SALES TAX EVASION AND BRIBERY**

RAMON J. HIRSIG  
Executive Director

The California State Board of Equalization (BOE) today announced that Joseph Mansour Boudames III was found guilty on April 25, 2005 by a San Francisco jury on two felony counts of sales tax evasion and one felony count of bribery. The case was prosecuted by the California Attorney General's Office Special Crimes Unit.

Boudames was the President of Bay Area Computers (BAC), a retail computer store in San Francisco. The case against Boudames began in 1998 when a BOE audit revealed approximately \$1.8 million in discrepancies between the business' bank deposits and its sales reported to BOE. When presented with the audit findings, Boudames offered a bribe to the auditor. After the auditor reported the offer, an undercover operation with the assistance of the California Bureau of Investigation resulted in the exchange of \$10,000 in cash for a bogus audit report.

The charges were based on Boudames' failure to pay the State of California \$89,254 in sales tax between April 1, 1997 and March 31, 1999, as well as the bribery that was committed in 1999. Boudames was remanded into custody with sentencing set for May 16, 2005.

The California State Board of Equalization collects nearly \$42 billion annually in taxes and fees and serves as the enforcement agency for these revenues, which support state and local government services. It also acts as the appellate body for business tax appeals, franchise and personal income tax appeals, and plays a significant role in the assessment and administration of property tax.

###



# NEWS RELEASE

STATE BOARD  
OF EQUALIZATION  
450 N Street  
Sacramento  
California 95814

*DRAFT*

NR#  
Date: July 26, 2005  
Contact:  
Communications Office  
(916)  
Website: <http://www.boe.ca.gov>

RAMON J. HIRSIG  
Executive Director

## ALAMEDA COUNTY BUSINESSWOMAN CHARGED WITH FELONY SALES TAX EVASION

The California State Board of Equalization (BOE) announced today that criminal charges were filed alleging that Roberta Lee Hudson (Hudson) doing business as Hudson Flooring Sales evaded in excess of \$400,000 of sales taxes during the period from October 1, 1999 to June 3, 2003.

The charges allege that Hudson filed false and fraudulent returns and failed to report or pay tax to the BOE. The tax rate on retail sales in Alameda county is 8.75 percent.

The California State Board of Equalization collects nearly \$42 billion annually in taxes and fees and serves as the enforcement agency for these revenues, which support state and local government services. It acts as the appellate body for franchise and personal income tax appeals, and also plays a significant role in the assessment and administration of property tax.

###

# Investigations Division Reports

Responsible Function	Report Title	Due Date	Last Day for Database Inclusion	Recipient Function
Investigator	Monthly Case Activity Report *	1st work day each Month	Last Work Day of Month	Supervising Investigator
Investigator	Cigarette and Tobacco Inspection Reports	On-going	Last Work Day of Month	Supervising Investigator
Supervising Investigator	Monthly Team Statistical Report	7th Day of Month	Last Work Day of Month	Area Administrator
Supervising Investigator	Team Case Activity Summary	15th Work Day of Month	Not Applicable	Area Manager
Audit Review	Monthly Audit Inventory Report	10th Work Day of Month	Not Applicable	Division Chief/ Area Administrator
Petitions Desk	Petitions, 880 Accounts, Flagged Accounts	5th Work Day of Month	Not Applicable	Division Chief/ Area Administrator
Training Desk	Monthly Training Recap\Cost	15th Work Day of Month	Not Applicable	Division Chief/ Area Administrator
Area Manager	Monthly Team Statistical Report	12th Day of Month	Not Applicable	Statistics Desk
Statistics Desk	CHP Expenditures	10th Work Day of Month	Not Applicable	Division Chief/ Area Administrator
Statistics Desk	Overtime Expenditures	10th Work Day of Month	Not Applicable	Division Chief/ Area Administrator
Statistics Desk	Division Widget Report	16th Day of Month	Not Applicable	Division Chief/ Area Administrator

\* Southern California Investigators submit case updates to Supervising Investigators every other month.

## Memorandum

To: Mr. Gil Haas, Chief  
Investigations Division

Date: December 2, 2004

From: Sally Swell, Supervisor  
Northern Region - Team 5

Subject: Inspection Complaint No. XXX  
Cigotene, SR BH XX-XXXXXX

The owner of Cigotene, Mr. John Smith, called me on December 1, 2004, to file a complaint regarding the inspection conducted at his place of business on November 30, 2004.

## CONTENTION

Mr. Smith contends that Investigator Jim Popular erroneously confiscated cigarettes from his place of business at 555 Stony Road, San Francisco, CA. He states that all cigarettes seized by Investigator Popular were legitimate cigarettes with valid California cigarette tax stamps affixed.

## FINDINGS/ANALYSIS

I asked Mr. Smith a number of questions about the cigarettes seized, one of which was whether the cigarettes seized were listed in the Attorney General's California Tobacco Directory. I explained to him that beginning June 30, 2004, only cigarette brands and roll-your-own products listed in the Attorney General's California Tobacco Directory may be sold, offered for sale or possessed for sale in this state. Mr. Smith acknowledged that Investigator Popular had given him notice a few weeks earlier that he could not sell the cigarettes and advised him to return them to the distributor where he had purchased them. Mr. Smith said the distributor would not take them back so he decided to go ahead and sell them.

While on the telephone, I guided Mr. Smith to the Attorney General's website where he learned that the brand of cigarettes that were seized by Investigator Popular were not, in fact, on the Attorney General's list. I further explained the MSA requirements to Mr. Smith and guided him through the Board's web pages that discuss the requirements of AB 71 and our procedures for handling MSA violations.

## ACTION

After explaining the law and our procedures to Mr. Smith, he was satisfied that Investigator Popular acted appropriately. I suggested to Mr. Smith that he periodically review the Attorney General's website as it is updated on a weekly basis. No further action required; complaint is considered closed.

Reviewed: \_\_\_\_\_

Randy Silva, Area Administrator

\_\_\_\_\_ Date

Approved: \_\_\_\_\_

Gil Haas, Chief

\_\_\_\_\_ Date

## Memorandum

To: Mr. Gil Haas, Chief  
Investigations Division

Date: December 2, 2004

From: Sally Swell, Supervisor  
Northern Region - Team 5

Subject: Inspection Complaint No. XXX  
Toolie Tobacco, SR BH XX-XXXXXX

The owner of Toolie Tobacco, Ms. Smok Alot, called me on December 1, 2004, to file a complaint regarding the inspection conducted at her place of business on November 30, 2004.

## CONTENTION

Ms. Alot contends that Investigator Carl Clutch made inappropriate advances toward her during the inspection at her place of business at 111 Clear Pond Road, Tiburon, CA. She states that during the inspection and while the other Board employee stepped out to the car, Investigator Clutch came very close to her pretending to reach for cigarettes on the store shelf. She further states that he made sexual comments which quickly stopped when the other Board employee returned to the shop.

## FINDINGS/ANALYSIS

I asked Ms. Smith if she wished to file a formal complaint with the Board against Investigator Clutch. She did. I informed her that I would forward her complaint to the Board's Taxpayers' Rights and Equal Employment Division (TRAO/EEO) to investigate her complaint. I told her that the Equal Employment Opportunity Office in this division conducts independent investigations for complaints of this nature and that they will contact her directly. I also gave her EEO's direct telephone number should she wish to contact them.

## ACTION

This is an issue that falls in the area of responsibility of EEO and is being forwarded to their office to handle. A referral memo is attached. No further action is required by ID; the complaint can be logged out and filed.

Reviewed: \_\_\_\_\_

Randy Silva, Area Administrator

\_\_\_\_\_ Date

Approved: \_\_\_\_\_

Gil Haas, Chief

\_\_\_\_\_ Date

## Memorandum

**To:** Ms. Jodi Traversaro  
Equal Employment Opportunity Office

**Date:** December 2, 2004

**From:** Gil Haas, Chief  
Investigations Division

**Subject:** Complaint Referral

Attached is a copy of a complaint received by the Investigations Division. This issue falls within your area of responsibility. If I can be of any assistance, please let me know.

Thank you.

GH  
Attachment

## Memorandum

To: Ms. Roberta Cornell, Supervisor,  
Special Procedures MIC:55

Date:

From: , Investigation Supervisor  
Investigations Division

Subject: Investigative Costs to Cost of Collection  
Taxpayer's Name:  
Permit #:

As a result of a criminal proceeding, the subject was ordered to pay \$        in investigative costs to the Board of Equalization. The amount of \$        was paid on        and applied to SR        . We request that the amount of \$        be transferred to "Cost of Collection" and the monies be identified as Investigative Costs (INV). Also, please put a Special Procedure (SPE) hold on the payment.

Attached is a copy of the court order which references the investigative costs incurred. Should you have any questions, I can be reached at        .

Attachment

cc: Mr. Stephen Rudd, MIC:46  
Mr. Gil Haas, Jr.  
Ms. Dina Hay  
Mr. Randy Silva  
Mr. Sid Zigelman



## Memorandum

To: Ms. Carolyn Hoffman, Supervisor  
Excise Taxes Division MIC:56

Date:

From: , Investigation Supervisor  
Investigations Division

Subject: Investigative Cost to Cigarette Seizure Fund.  
Taxpayer's Name:  
Permit #:

As a result of a criminal proceeding, the subject was ordered to pay \$        in investigative costs to the Board of Equalization. The amount of \$        was paid on        and applied to LR        . We request that the amount of \$        be identified as Investigative Costs and transferred to the Cigarette Seizure Fund, account number CF ET 02-010000.

Attached is a copy of the court order which references the investigative costs incurred. Should you have any questions, I can be reached at        .

Attachment

cc: Mr. Dennis Maciel, MIC:56  
Mr. Gil Haas, Jr.  
Ms. Dina Hay  
Mr. Randy Silva  
Mr. Sid Zigelman

## Memorandum

To: Mr. Robert Colivas, Principal Compliance Supervisor  
Fuel Taxes Division MIC:30

Date:

From: , Investigation Supervisor  
Investigations Division

Subject: Identification of Investigation Cost  
Taxpayer's Name:  
Permit #:

As a result of a criminal proceeding, the subject was ordered to pay \$ in investigative costs to the Board of Equalization. The amount of \$ was paid on and applied to MT . We request that the amount of \$ be identified as Investigative Costs.

Attached is a copy of the court order which references the investigative costs incurred. Should you have any questions, I can be reached at

Attachment

cc: Mr. Ed King, MIC:33  
Mr. Gil Haas, Jr.  
Ms. Dina Hay  
Mr. Randy Silva  
Mr. Sid Zigelman

## Memorandum

To : Mr. Randy Silva, Northern Area Administrator  
Investigations Division MIC: 42

Date: April 19, 2005

From : Tammie Tessier-Jennings, Supervising Investigator  
Investigations Division MIC: 42

Subject : Request for Transcription Services

Re: Mike Anderson Tobacco  
Case # 616

A taped interview was conducted by Sean Lister and John Raboy, BOE Senior Investigators, on April 4, 2005 and attended by Jim Cahalan, attorney from Hanson, Bridgett, Marcus, Vlahos, Rudy LLP, Legal Counsel representing Fedex Freight West. Interviews were conducted (in the order listed) of the following persons:

Robert (aka Bob) Slama  
Rick Deanda  
Christopher (aka Chris) Jones  
Frank Laughlin  
Peter Hanners

Please transcribe one interview tape (double sided) and return the interview tape and both a printed and CD-ROM version of the interviews within 14 days.

TJ:jr

Confidential: Not to be Released

CORDOVA SECRETARIAL SERVICE

~TRANSCRIPTION REQUEST~

DATE: \_\_\_\_\_

FROM: ☐ EEO Office ☐ Security/Audit  
☐ Investigations ☐ Other \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

CASE # \_\_\_\_\_

TIMEFRAME: ☐ Same Day ☐ Next Day  
☐ 3-7 Days ☐ 8-14 Days

NOTES/SPECIAL INSTRUCTIONS:

\_\_\_\_\_  
Questions/Concerns?  
Please call Patty at 361-7989  
pattyccs@comcast.net

Contractor: Patty O'Connor  
 Service: Cordova Secretarial Services  
 Agreement # 04-023

**Cost for Services Report**  
 FY 2004-2005

Date of Request	Lead Investigator	Timeframe for Service	Requesting Unit	Case No. and Name	Invoice No.	No. of pages	Cost	Balance
12-Jul-05	S. Lister	8-14 days	326	609 - United Wholesale	791d	113	\$254.25	\$9,745.75
29-Aug-05	K. Horton	8-14 days	326	600 - Clark Trading Comics and Cards				\$9,745.75
								\$9,745.75
								\$9,745.75
								\$9,745.75
								\$0.00
								\$0.00
								\$0.00
								\$0.00
								\$0.00

**Exhibit 13**

**Charges:**

Same Day: \$5.00 per page

Next Day: \$4.00 per page

3-7 Days: \$3.00 per page

8-14 Days: \$2.00 per page

Confidential text removed

# **Investigations Division Policy and Procedures Manual**

## **Chapter Two**

### **Interviewing Subjects**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## INTERVIEWING SUBJECTS

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# INTERVIEWING SUBJECTS

## CHAPTER TWO

### INTERVIEWS

**200.000**

Investigators in the Investigations Division (ID) will have opportunities to speak directly with persons who have varying degrees of knowledge pertaining to an investigation. These contacts will most often be considered interviews and should be treated as such from inception. Interviews are expected in criminal investigations and typically planned in advance. Random contacts in the field, during inspections or “knock-and-talks,” are also considered interviews and should be documented. Care should be taken not to discount statements made by persons contacted during random meetings as fruitless. It is important to take note of what is being said by anyone willing to speak regarding the investigation. What may seem insignificant at the time could become very useful later.

Tape recording of undercover contacts, suspect interviews, or witness interviews is encouraged. The interviewers must request permission from the subject/witness to tape the interview. If permission is granted, the tape recording must begin with a question from the interviewer to the subject/witness asking for their permission to tape the interview, and, before proceeding, there must be a positive, audible response from the subject/witness confirming the taping of the interview. If the interview is taped, then the tape needs to be transcribed as soon as possible. The ID investigator is responsible to ensure that the tape is transcribed. If the ID investigator interviewed with a non Board of Equalization (BOE) investigator (i.e. other agency, law enforcement, etc.) and that agency transcribes the tape, it is acceptable to use that transcription. To document interviews with and statements made by suspects/witnesses, ID investigators will use form BOE-878, *Memorandum of Interview/Contact* (available on the ID Intranet). All interviews, regardless of who is interviewed, will be recorded on a BOE-878. The BOE-878 should be prepared and submitted to the ID investigator’s supervisor for approval within three (3) days of conducting the interview or, if the interview was conducted out in the field, by the close of the first business day the investigator is back in the office. When preparing the interview report, the investigator is to use the first person (i.e. “I saw, I witnessed, the subject told me...”).

### DOCUMENTING THE INTERVIEW

**205.000**

The BOE-878 should be prepared in summary format by the person taking notes during the interview (this may not always be the primary interviewer). The primary interviewer must sign the BOE-878 on the first signature line, despite who authors the report. When interviews occur during random contacts, such as inspections, the BOE-878 can be signed by the one ID staff member who acted as the primary interviewer, although two ID staff members are always preferred during any public contact.

During a search warrant, on the other hand, whether or not the subject is in law-enforcement’s custody, the primary interviewer will be assisted by an ID staff member. The roles will most often be pre-assigned by the case lead. The primary interviewer will sign on the BOE-878’s first signature line and the assisting person will sign on the “Other Person” line.

In rare cases, the subject will be asked to sign the report on the “Witness” line. This is because in most instances the report is written after the subject has been released. Each person signing the report will enter the current date. If any person involved disagrees with the report’s contents, the report should be reexamined by the original author and rewritten if needed to ensure it is an accurate summary of what was said by the interviewee.

Circumstances can arise when the ID’s primary interviewer does not have another ID staff member available to assist with the interview. As previously discussed, interviews resulting from random contacts, such as inspections, can be performed by a single ID staff member. Interviews that mandate a two person team under ID policy, such as those performed during a search warrant or custodial situations, can be performed by one ID staff member with prior management approval. This is not meant to imply that the ID staff will perform the interview alone. Before questioning can begin, the ID staff must secure an available witness from another agency. It is preferable to use law-enforcement personnel when ID staff is not available. When this occurs, the ID staff will obtain the assistant’s name, badge number, if applicable, agency, and contact information and include it on the BOE-878.

### CONTENTS OF THE INTERVIEW REPORT

**210.000**

The BOE-878 should not give the impression that it is a word-for-word recap of the interview. A properly organized BOE-878 will provide the interviewee’s statements on a specific topic, which can often be made out of sequence, in

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **CONTENTS OF AN INTERVIEW REPORT (cont.) 210.000**

a coherent summary. The summary will include only paraphrased statements made by the interviewee, while avoiding any embellishments. Direct quotes will only be used verbatim when the interview notes document a question and answer, such as an admonishment.

The interviewer will either read a Beheler Admonishment or Miranda Warning when a subject is questioned while in a search warrant setting or in law-enforcement's custody. The reading of these admonishments, and the interviewee's subsequent acknowledgement of understanding, must be reflected in BOE-878.

In cases where the interview is recorded, the transcript will be attached to the BOE-878. The BOE-878 should reflect that there is an attachment. Recordings made by the ID staff will require the primary interviewer to state the date, time, and persons present on the record. The interviewer will also ask and receive permission from the interviewee to record the questioning while on the record. If the subject refuses to be recorded, manual notes must be taken in order to prepare the interview report. Once this is done, the admonishment and normal interview process can begin. If the recording is made by an outside agency, the transcript of the interview will be obtained and attached to the BOE-878. Reference should be made on the BOE-878 regarding the agency providing the transcription and the number of pages.

### **ADMONISHMENTS BEFORE THE INTERVIEW 215.000**

The circumstances surrounding the interview must be considered by the interviewer before questioning begins. Random contacts with interviewees in public settings, such as inspections, can typically be conducted freely and without admonishments. Interviews arising from random contacts most often do not result in interviewees being placed in custody or detained in any way. If, during the course of the random contact, law-enforcement arrives and detains the interviewee, a Beheler Admonishment must be given. Should law-enforcement place the interviewee into custody, the interviewer will wait for the Miranda Rights to be given to the interviewee before continuing to question.

The atmosphere during a search warrant, however, can lead a subject to believe he/she is being detained. Although this is typically not true, the interviewer must read the Beheler Admonishment before questioning can begin. This is true regardless of who the subject is deemed to be: a business entity official, an employee, or a present third party.

Subjects who are held in law-enforcement's custody must be read their Miranda Rights, commonly referred to as "being mirandized." The interviewer must ensure that law enforcement has mirandized the subject prior to questioning. If there is doubt, the subject must be mirandized by either law-enforcement or the ID's interviewer before any questioning can begin. The Miranda Rights statement must be read word for word.

### **PERFORMING THE INTERVIEW 220.000**

One of the most important aspects of any investigation is the interview. Whether the interview results from the initial complaint (either in person or on the telephone), or involves a witness or the suspect, the basic principle is the same: establishing communication with another person to get relevant information to assist with the investigation.

Investigators who assume the role of interviewer during random field contacts should always be prepared with basic fact-finding questions that can apply to a variety of persons. Once the interview begins, the interviewer can tailor questions to gain the information as needed.

Investigators assigned to be the interviewer in preplanned circumstances, such as search warrants and custodial situations, should familiarize themselves with all available background information on the subject. The interviewer should be prepared in advance of performing the interview. Lead investigators will often give the interviewers a set of patterned questions, which may be tailored to the subject's presumed involvement, such as owner, employee, and accountant. The lead investigator may also provide more specific questions to the interviewer prior to starting the interview.

The primary interviewer is the person charged with controlling the interview. The person assisting should not intervene or interject without having an indication from the interviewer that the timing is appropriate. The interviewer will make every effort to control the subject's demeanor. Although this chapter does not discuss the *how-to* of an interview, an interviewer should expect the unexpected from the subject. The interview process and circumstances (e.g. search warrant, inspection, seizure) can elicit a variety of emotions during the interview process. Varying emotions should not discourage or distract the interviewer from completing the interview. Although it is very important to allow the subject to complete his or her statements or thought process, the interviewer must use good judgment in determining when the interview has derailed.

## INTERVIEWING SUBJECTS

### PERFORMING THE INTERVIEW

(cont.) 220.000

The interviewer should tactfully repeat and restate questions to maintain a flowing dialog and to have the subject reiterate important statements. It is important to continue the questioning if it appears the subject is being forthright, as a subject will often give more useful information as the interview progresses.

The interviewer will stop the interview process only in limited circumstances. The interview should be stopped in non custodial situations (must be stopped in custodial situations) when the subject asks to speak with an attorney before continuing. The interviewer may stand by and wait for the interviewee to reinstate dialog. Should the subject begin to speak, the interviewer can ask if the interview can be restarted. With the subject's consent, the interview process can proceed.

### SEARCH WARRANT GUIDELINES

225.000

- Interview subjects as soon as possible after the service of the warrant. Generally, subjects are initially more willing to talk right after the search warrant has been served. Interview the main targets first.
- Have law enforcement identify all subjects at the warrant location and all subjects that may show up later. Obtain the cards that contain the pertinent information at the conclusion of the search warrant.
- Before starting the interview attempt to obtain computer passwords, keys, locations of safes, location of storage facilities, and location of safe deposit boxes, etc.
- Investigators should attempt to record interviews. It should be explained to the subject that recordings help preserve their side of the story and it is to their benefit to have the interview recorded. Again, if the subject refuses to be recorded, manual notes must be taken for the interview report.
- Obtain background information at the start of the interview (i.e. name, home address, marital status, etc.). Next, ask questions to obtain background information (i.e. number of cash registers used, who makes deposits, who fills out tax returns, etc.). Hard questions should generally be asked towards the end of the interview.

### USING YOUR INTERVIEW

230.000

The BOE-878 is prepared with the presumption that sometime in the future the information will be used in a prosecution. The BOE-878's are included in all prosecution packages presented by the ID staff.

### PROP. 115 TESTIMONY (HEARSAY)

235.000

Prop. 115 testimony allows someone to testify as to hearsay evidence at a preliminary hearing. This testimony is for preliminary hearings only and does not relate to an actual trial. ID investigators have the ability to become qualified under Prop 115, and, once qualified, can testify as to hearsay at a preliminary hearing. However, some District Attorneys will still prefer a peace officer present. The ID investigator needs to discuss the situation with the District Attorney and proceed accordingly.

# **Investigations Division Policy and Procedures Manual**

## **Chapter Three**

### **Surveillance**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## **SURVEILLANCE**

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## SURVEILLANCE

### CHAPTER THREE

#### SURVEILLANCE

300.000

#### SURVEILLANCE OPERATIONS

305.000

Investigations Division (ID) staff is authorized to conduct stationary surveillance of people, vehicles, or locations. Additionally, staff may move to a new location, when necessary, to survey continued activity in the enforcement of the tax laws administered by the Board. Staff needs law enforcement support whenever there is the possibility of personal harm, as staff safety is our foremost concern. **Staff is not authorized to conduct moving surveillance.** All moving surveillance will be done by law enforcement personnel. ID staff may not actively engage in the pursuit of the vehicle of a suspected tax evader. During stationary surveillance, when the possibility of personal harm exists, ID staff will be within visual sight of law enforcement, and not in the line of sight of the person(s) being surveilled. Staff will ensure that law enforcement personnel know where they are, should assistance be required. Close communication with and visual proximity to law enforcement officials will ensure a quick response to any potential safety problem.

In all circumstances, the traffic laws must be obeyed when relocating positions, including at the direction of law enforcement officers.

With management approval and assistance from law enforcement personnel, ID staff may drive separately while conducting surveillance. If moving surveillance by ID personnel is required, staff will at all times, distance themselves from the person under surveillance while following direction from law enforcement personnel who are actively engaged in surveillance of the suspect vehicle. Staff should not locate themselves so as to be able to see the suspect vehicle during the moving surveillance.

Rental cars used for surveillance should be reserved in neutral colors with tinted windows to avoid standing out during surveillance. Take surveillance equipment such as, binoculars, video recorder, tape recorder, and a camera. Check the equipment to make sure it is in operating order. Document all suspect activity on the ID-300, *Surveillance Log*. Investigators should always be aware of their surroundings to avoid someone sneaking up on them.

#### REQUESTING MOVING SURVEILLANCE ASSISTANCE

310.000

The Board of Equalization enters into a new contract with the California Highway Patrol (CHP) at the beginning of every fiscal year. The CHP provides police protective/investigative services to the ID on an "as-needed" basis. These services include surveillance and other investigative services as needed and mutually agreed to, including preparing investigative reports, findings, and all supportive documentation. The contract provides a listing of the current fiscal year CHP Field Division Warrant Service Coordinators which is to be referred to when requesting service.

ID staff shall request CHP services at least seventy-two (72) hours in advance of the date of services. The CHP Field Division Warrant Service Coordinator(s) may not be able to provide services when requests are received with less than seventy-two (72) hours notice; however, every effort will be made by the appropriate CHP Field Division Warrant Service Coordinator to accommodate the request.

The following items are to be prepared by ID staff and submitted to the ID Area Administrator for approval:

1. A completed *Safety Services Program Task Order Form* (CHP 312) (Example 1).
2. A letter addressed to the CHP Field Division Warrant Service Coordinator describing the length of time service is requested, purpose of investigation, and reference to the overview attachment (Example 2).
3. The overview attachment is to include a description of the requested services, objective of the surveillance, case history, suspect(s) identification, and vehicle(s) information (Example 3).

Upon approval by the Chief, Investigations Division, ID staff will fax the surveillance package to the CHP Field Division Warrant Service Coordinator. The CHP Field Division Warrant Service Coordinator will sign and date the CHP 312 and fax it back.

The original surveillance package is to be maintained in the case file. Two complete copies of the package are necessary. One copy goes to the direct supervisor and the second copy goes to the ID Chief's Administrative Assistant.

# **Investigations Division Policy and Procedures Manual**

## **Chapter Four**

### **Inspection Procedure**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

# INSPECTION PROCEDURE

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# INSPECTION PROCEDURE

## CHAPTER FOUR

### INSPECTION PROCEDURE

405.000

#### PURPOSE OF THIS SECTION

405.005

This section is a guide for conducting inspections of manufacturers and importers of cigarettes and distributors, wholesalers, importers, and retailers of cigarettes or tobacco products who are engaged in business in California. The guide incorporates procedures and techniques that have evolved over a period of years, and which have proven to be sound and practical. This section cannot be a substitute, however, for experience, training, good judgment, and active supervision.

#### AUTHORIZATION

405.010

The California Cigarette and Tobacco Products Licensing Act of 2003 (ACT) provides for licensure by the State Board of Equalization (Board) of retailers, distributors and wholesalers of cigarettes or tobacco products and manufacturers, and importers of cigarettes that are engaged in business in California. In addition, the ACT provides for the licensure of manufacturers and importers of cigarettes. The ACT prohibits retailers, manufacturers, distributors, wholesalers, and importers from distributing or selling cigarettes and/or tobacco products unless they are licensed. The Board is authorized to suspend or revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of cigarettes or tobacco products who is in violation of the ACT's provisions.

#### GENERAL INSPECTION GUIDELINES

405.015

State and local law enforcement and licensees all play an important role in preventing cigarette and tobacco products related problems within our communities. The Board is committed to a philosophy of service and accountability to the public through sound administration of the tax laws. The Board licenses and regulates the California cigarette and tobacco products industry. Because most of the taxes administered by the Board are self-assessed by the taxpayer, the goal of the inspection process is to secure voluntary compliance among licensees and permittees.

Business and Professions Code (B&P) §22980(a)(1) authorizes any peace officer, or Board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of §830.11 of the Penal Code, upon presenting appropriate credentials, to enter any place and to conduct inspections as discussed below. Inspections may be performed at any place at which cigarettes or tobacco products are sold, produced, or stored or at any site where evidence of activities involving evasion of cigarette or tobacco products tax may be discovered.

For safety purposes, personal vehicles may not be used to perform inspections, and inspections should be performed by a minimum of two people. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered. Additionally, inspections shall be requested or conducted no more than once in a 24-hour period at the same location.

Inspectors should ensure that all equipment is in good working condition prior to beginning inspections. SICPA® scanners should be synced to ensure that updated information is captured when scanning tax stamps. Cell telephones should be fully charged in the event an emergency should occur.

Inspectors should ensure that all owners/employees on the premises are aware a Board inspection is underway. When staff enters the premises and identifies themselves, it is imperative that they ask if there are any other persons at the inspection location. When closed doors are encountered during an inspection, staff must knock first followed by an announcement that an inspector with the Board is conducting an inspection, prior to entering the room.

#### PRE-INSPECTION PROCESS

405.020

The pre-inspection process will ensure that all inspections are conducted utilizing the most current intelligence and background information. The process will enable inspectors to better plan an inspection that incorporates all related parties and businesses, does not impede active investigations, and provides information necessary to ensure a safe environment for inspectors and the person in control of the business at that time. Inspectors should use the information gathered to develop a picture of what the potential inspection should look like upon entering the location.

Inspectors should develop a list of all licenses and permits issued by the Board utilizing the Integrated Revenue Information System (IRIS) and:

- check the Secretary of State if appropriate for corporate, LLP or LLC status gather pertinent information contained in the Investigations Tracking System (ITS);
- review the Inspection Zone Database (IZ Database) for prior inspection history;

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### PRE-INSPECTION PROCESS

(cont.) 405.020

- check the Delivery Zone databases to confirm there have been no deliveries from unlicensed, out-of-state suppliers;
- print the most current California Tobacco Directory for the brand names of Master Settlement Agreement (MSA) listed cigarettes and Roll Your Own (RYO) tobacco; and,
- print the District Attorney Database (DA Database) for applicable prosecuting jurisdiction instructions.

### STEP DETAILS

405.025

- ◆ When gathering investigative and background information for an inspection, there are a number of permits that may be related to a location. Each permit will have a Taxable Activity Type (TAT) that denotes the tax program description. The following is a list of possible TATs that inspectors may find when searching IRIS for active permits and licenses:

TAT	TAX PROGRAM DESCRIPTION
-----	-------------------------

CM	Cigarette Manufacturer
----	------------------------

CP	Tobacco Products Distributor
----	------------------------------

CR	Cigarette Distributors
----	------------------------

CW	Cigarette Wholesaler
----	----------------------

SR	Regular Sales Tax
----	-------------------

SR	Consolidated within single taxing jurisdiction
----	--

SR	Consolidated w/ multiple taxing jurisdictions
----	---

TAT	TAX PROGRAM DESCRIPTION
-----	-------------------------

TW	Tobacco Products Wholesaler
----	-----------------------------

LR	Retailer of Cigarettes or Tobacco Products License
----	--

LD	Distributor of Cigarettes or Tobacco Products License
----	---

LW	Wholesaler of Cigarettes or Tobacco Products
----	--

LM	Manufacturer/Importer of Cigarettes or Tobacco Products License
----	---

In addition to permit information, IRIS should be used to provide the inspector with information on the account status, ownership, sales, and citations. The following is a list of possible screens inspectors may want to review as part of the pre-inspection process: TAR AI (account registration information), REV FZ (sales information) SPR LB (cigarette license print history), REV BA (account summary browse), VLT BA (browse citations), and TPS TP (account status).

- ◆ The ITS database should be checked prior to any inspection for active and closed Investigations Division (ID) complaints and cases. Information contained in prior complaints or cases may be valuable when planning, coordinating, and conducting inspections. When the subject of the inspection is related directly or indirectly to an active investigation, and the inspection is not a referral from the lead investigator, the lead investigator should be contacted immediately. Also, in cases where the ITS shows that a seizure was conducted during a prior inspection, no inspection shall be performed until after the 60-day notice period to all interested parties, related to the seizure, has passed and no appeal has been filed, unless requested by a supervisor, management, or prosecutor.
- ◆ The IZ database should be reviewed to determine if the taxpayer has had prior inspections. The IZ database is separated into Northern and Southern California areas. All retailer, wholesaler, and distributor inspections are recorded in the IZ database. If the account was flagged for re-inspection the information from that inspection should be included in the current inspection package. If seizures or citations were issued at prior inspections the Violation Tracking Screens (VLT) and Appeals Screens (APL) should be checked in IRIS to determine whether there are pending appeals.
- ◆ The delivery databases should be searched on the "I" drive to see if there have been deliveries from out of state suppliers to the address of the business.
- ◆ The DA database should also be reviewed to determine the criteria necessary for issuing criminal citations in each jurisdiction.
- ◆ Beginning June 30, 2004, only cigarette brands and roll-your-own (RYO) products that are listed in the Attorney General's California Tobacco Directory may be sold, offered for sale, or possessed for sale in the state. The California Attorney General publishes the list on the Attorney General's website at: <http://ag.ca.gov/tobacco/directory.php>. The website should be checked weekly for updates and inspectors should have a copy of the current list when performing inspections.

### INSPECTION PROCESS

405.030

Upon entering the place of inspection, inspectors should request to speak to the owner of the business or person in charge if the owner is not present. Once the owner or person in charge is identified, the inspectors should display identification and a badge if requested, and inform the person in charge that the business will be subject to a compliance inspection. If the person refuses inspection, the investigator should explain the consequences of their

## INSPECTION PROCEDURE

### INSPECTION PROCESS

(cont.) 405.030

decision to not allow an inspection. If the person is still not willing to permit the inspection, a supervisor should be contacted.

All inspections should be conducted in a manner that causes minimal disruption to the business' ongoing transactions. The safety of inspectors, owner or person in charge, employees, and/or customers should be the most important consideration when performing an inspection and every precaution should be utilized to ensure that inspectors have an environment that is safe to conduct the inspection. Situations could make it prudent to contact the local police department to ensure safety or enforce the law. Local police should be contacted immediately during

any situation that would normally require a person to call 9-1-1. The inspectors' supervisor should approve all other requests for assistance by local police.

Inspectors should make a visual observation of the business and verify that the business has all necessary permits and licenses displayed. Any abnormalities or violations should be handled by way of referrals to appropriate departments or agencies and/or citations as discussed in section 515.000.

During the pre-inspection process, the sales activity (REV FZ) for the past twelve months should have been reviewed. While at the business, the inspector should compare the inventory to the reported sales and any other information that is obtained (monthly rent). If it appears that the business may not be reporting total sales or may be claiming excessive deductions, a BOE-1164, *Audit Memorandum of Possible Tax Liability*, should be prepared and submitted to the District controlling the account.

During the course of the inspection, the inspectors should also confirm BOE records reflect the most accurate data. They should confirm information such as telephone numbers, DBA, mailing address, business address, adding a sub-location etc. The inspector should obtain the accurate data and prepare a BOE-220-I, *Account Maintenance/Referral* (Exhibit 1). Any changes to the cigarette and tobacco license accounts must be submitted on a separate BOE-220-I.

Inspectors should review the California Tobacco Directory (directory) to become familiar with products listed in the directory (legal to sell in California) that are manufactured by a non-participating manufacturer (NPM). If NPM product is found during an inspection, the inspectors shall provide the lead inspector with the following information; Cigarette brand and approximate inventory, date of inspection, retailer's LR Q #, Name of stamping distributor, and date product was stamped.

ID Inspectors will provide a copy of Publication 152, *Cigarette and Tobacco Product Sales Compliance Inspection*, Publication 407, *Master Settlement Agreement*, and Publication 78, *Sales of Cigarette and Tobacco Products in California*, to business owners/operators when initiating an AB 71 inspection and note on the ID-016 that the information has been provided. Publication 152 explains the purpose of the inspection, the inspection process, and the documentation that will be requested during the inspection, discusses seizures of untaxed and illegal cigarette and tobacco products, which may result in a citation being issued and describes the citation process. Publication 152 specifically provides information and instruction to business owners/operators on how to file a complaint with the Board if they believe their rights have been violated or have any concerns about an inspection, and their petition rights related to seized products.

Pursuant to B&P §22974, retailers; B&P §22978.1, distributors and wholesalers; and B&P §22979.4, importers, purchase invoices must be maintained on the premises for the previous twelve months. Additionally, pursuant to B&P §22978.5(b), distributors and wholesalers, and B&P §22979.5(a), manufacturers and importers, persons operating a business must retain sales records on the premises for the previous twelve months. When presented with records, inspectors should review the purchase and sales invoices and verify the following information:

- Cigarettes or tobacco products are purchased from licensed wholesalers, distributors, importers or manufacturers of cigarettes.
- Information on invoices is adequate and complete per B&P §22978.4 and B&P §22979.5.
- Purchase invoices support cigarette inventory and retail stock.
- Purchase invoices support tobacco products inventory and retail stock.

Inspectors may use the ID-16-C, *Tobacco Inventory Sheet*, as a tool to record the manufacture dates and quantities of the most popular tobacco products in inventory. This list can be compared with the purchase invoices on the premises to verify that each item on the list is supported by a purchase invoice demonstrating the product was purchased tax paid from a licensed supplier.

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## **INSPECTION PROCESS**

**(cont.) 405.030**

If the records are not made available upon request by inspectors, the owner or person in control can be cited. However, prior to issuing the citation, the owner or person in control should be given an opportunity to state the reasons for noncompliance. If an acceptable reason is provided, the owner or person in control should not be cited.

An example of acceptable reason for the unavailability of records is that the business is under audit. Another reason is that the records for the previous quarter are at the taxpayer's accountant's office for preparation of quarterly returns. However this reason is only acceptable when the prior three quarters of records are available.

Cigarettes and/or tobacco products found to be untaxed should only be seized based on the exercise of good judgment and caution, and with the approval of the inspector's supervisor.

If a person is unable to provide documentary evidence in the form of purchase invoices, tax reports, etc., to establish that the tobacco products in question are tax-paid, the investigator should not seize the tobacco products without prior approval of their supervisor. Although the person would be in violation of B&P §22974, §22978.1, or §22979.4 (requirements to retain one year of purchase invoices at the business), the person may be able to provide documentation at a later time indicating that the tax has been paid.

Cigarettes and tobacco products should be seized administratively if all of the following conditions are met:

- The inspectors have permission from the appropriate lead person to inspect the business.
- The inspectors have conducted a complete background and investigative information check on the business, owners, and other related parties (IRIS, ITS, etc.).
- The cigarettes and/or tobacco products meet the requirements for seizure under B&P §22974.3, B&P §22978.2 and/or R&T §30436.
- The supervisor's approval has been obtained prior to seizure. If a supervisor is not available for approval, the lead at their discretion may approve the seizure.

When inspector's seize cigarettes or tobacco products, inspectors will provide a completed BOE-1317, *Receipt for Property Seized* (Intranet), to the person from whom the cigarettes or tobacco products were seized. If that person indicates that another person has an interest in the cigarettes or tobacco products, the investigator must obtain the name and address of the other person. The BOE-1317 should be completed in its entirety, listing the reason for seizure, with an itemized listing by brand of seized cigarettes and/or tobacco products. The person in control of the product must sign the BOE-1317 at the time of the seizure, and a copy should be left with that person.

The ID-016, *Compliance Inspection Report* (Intranet) will be completed at every inspection. The information gathered on an ID-016 could be useful in establishing distribution patterns, knowledge, or intent in current active or future related investigations. The information on an ID-016 will be essential when justifying a proper seizure at a hearing for release or recovery of property. The ID-016 should include, but not be limited to, the following:

- An itemized listing by brand of the quantity of cigarettes and/or tobacco products seized on the ID-016, and/or the ID-016-B.
- Reason for seizure.
- Any evidence or lack of evidence, justifying the reason for seizure (under comments). Detailed information regarding the inspection will be noted on the ID-609 Inspection Activity and/or the ID-504 Statement of Facts.
- If applicable, any citation numbers preprinted on the citation.
- All vendor information.

All administrative seizures of cigarettes and/or tobacco products are made under the authority of B&P §22974.3, B&P §22978.2 and R&T §30436. In addition, the ACT provides many penalties that can be utilized to encourage compliance through enforcement. Many of the penalties can be found in Division 8.6 of the B&P, as well as the R&T (See ID Intranet "Citation Handbook"). The Citation Handbook provides a description for each violation and the relevant B&P or R&T codes.

## **INSPECTION OF COUNTERFEIT PRODUCT**

**405.035**

AS PART OF ALL INSPECTIONS, CIGARETTE PRODUCTS MUST BE CHECKED FOR THE PRESENCE OF COUNTERFEIT CIGARETTE PRODUCTS USING THE TRAINING PROVIDED BY THE CIGARETTE MANUFACTURERS. The amount of cigarette product to be tested for counterfeit product will be based on what is reasonable for the size and nature of the business.

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## INSPECTION PROCEDURE

### **INSPECTION OF COUNTERFEIT PRODUCT**

**(cont.) 405.035**

A test for counterfeit product should occur once during every inspection. Product should be visually inspected for any obvious discrepancies in packaging such as coloring, misspelled words, and/or no mechanically embossed code. Additional possible indicators of counterfeit product are unstamped or counterfeit stamped cigarettes.

### **TRACING LEGITIMATE STAMPS AFFIXED TO COUNTERFEIT PRODUCT BACK TO THE LICENSED DISTRIBUTOR**

**405.040**

At the time of inspection, counterfeit product stamped with a valid California tax stamp will be scanned for encrypted information such as the distributor information, date of stamp application to the pack of cigarettes, and denomination at the time of inspection. This information will be documented in the inspection report to further assist the investigation. The encrypted information will be uploaded to the SICPA Data Management System at the end of the business day and a report may be generated at the request of ID staff on the specific stamp. A complaint will be written on any distributor for any counterfeit product stamped with valid California tax stamps. The complaint will be worked according to established policy.

### **VALID TAX STAMPS**

**405.045**

From time to time, ID staff is asked how the scanners they use are able to determine a valid stamp. The following is an acceptable response:

The SICPA® scanner used by Board employees is configured to read the unique encrypted code contained on each tax stamp. The information contained in each invisible code cannot be determined by any scanning equipment that does not use SICPA® proprietary technology.

Due to state laws requiring taxpayer confidentiality, ID staff is not to show the scanner's display upon the decryption of stamp data to a retailer.

### **PURCHASING SUSPECT PRODUCT THAT IS LEGITIMATELY STAMPED**

**405.050**

Investigators/Inspectors will make undercover "buys" of cigarettes from vendors who are suspected of possessing counterfeit product. Buys may be made as a result of a retail inspection in which suspicion of counterfeit product is found, an ongoing investigation, or through tips and/or leads from industry, law enforcement, business competitors, or informants. Purchased product maybe used to establish and develop probable cause required for search warrants and to support prosecution of felony tax evasion in criminal court proceedings. The investigator/inspector will purchase the product as evidence. The chain of custody will be documented on evidence tags and all evidence will be maintained by the Evidence Custodian (EC) in the ID pursuant to the ID Policy and Procedures Manual.

### **SENDING SUSPECT PRODUCT TO MANUFACTURERS FOR AUTHENTICITY TESTING**

**405.055**

If the product is to be sent for testing, the investigator/inspector will complete a BOE-882, *Request for Off-Site Testing of Property*, and submit the form to the EC for processing. Arrangements, for the transfer of property are to be made with the EC at least one business day in advance. If the investigator/inspector requesting the property is not the lead investigator, the EC will obtain the lead investigator's/inspector's or his/her supervisor's authorization for the transfer. Upon approval, the EC will retrieve the property from storage and arrange transfer to the product manufacturer for testing of authenticity.

### **RETURN OF PRODUCT**

**405.060**

When it is necessary to return product that was seized, the product should be returned to the owner with form BOE-880, *Property Release/Acknowledgement Authorization Release*, completed by the EC, if the product is in the EC's possession. The EC will keep a copy of the BOE-880 with the original BOE-1317 as documentation of the disposition of the product. If the product has not yet transferred to the EC, the lead inspector will complete the BOE-880, amend the BOE-1317, and provide copies to the EC. A copy of the BOE-880 must be provided to the office technician who inputs the information on ITS by either the EC or lead inspector, depending on the situation. ITS will be updated to indicate that the seized property, or portion of the seized property was returned and, if applicable, the seizure voided. If necessary, the monthly widget report will be adjusted, in the month the product is returned, to reflect changes in ITS. A signed copy of the BOE-880 must be included if the complaint closed-out with notes in the summary detailing the return of the property.

### **MASTER SETTLEMENT AGREEMENT (MSA) RELATED VIOLATIONS**

**405.065**

Any cigarette and/or tobacco product that is in violation of R&T §30165.1 is subject to seizure. Section 30165.1 prohibits a person from possessing any cigarettes or tobacco products unless the brand families of cigarettes or tobacco products are certified by the State Attorney General as a participating manufacturer at the time of inspection.

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**MASTER SETTLEMENT AGREEMENT (MSA) RELATED VIOLATIONS** (cont.) **405.065**

Distributor and wholesaler invoices are required to meet the invoicing requirements defined in B&P §22978.1 and §22978.4. Distributor and wholesaler sales invoices found during retail inspections that do not meet the invoicing requirements will be photocopied by ID staff and then forwarded to the ID Chief's designee.

**NON-MSA RELATED SEIZURES**

**405.070**

Form BOE-1239, Notice of Pending Administrative Action, will no longer be issued to retailers or wholesalers found in possession of non-MSA products. Product that is found to be in violation of R&T §30165.1(e)(2) during a retailer, wholesaler, or distributor inspection shall be seized at the time of the inspection pursuant to R&T §30436(e).

The Board will no longer provide retailers or wholesalers the opportunity to return non-MSA product to distributors for a refund or a credit. However, when seizing non-MSA product, staff shall inform the retailer they may contact their distributor for a potential refund or credit when the application of tax stamps to the non-MSA product occurred prior to the product's removal from the MSA list. Staff shall instruct the retailer to have the distributor contact staff for return of the product once the distributor has given a credit or refund to the retailer. Staff must include a comment on their inspection report noting that they have informed the taxpayer of the refund procedure.

Pursuant to R&T §30165.1, a distributor will be entitled to a credit for the Excise tax paid if the non-MSA product belonged to a brand family that was included on the Attorney General's list at the time it was stamped.

**POST INSPECTION**

**405.075**

The post inspection process is vital to the inspection procedures. In this phase, the activity reports and all necessary forms relating to seizures are completed. It is critical that all documents and forms be completed accurately and in detail. These documents are the foundation for supporting the actions taken during the inspection process. Also, the information contained within the reports, related to the inspections, can be vital to active or future investigations.

Upon completion of an inspection, inspectors will complete the BOE ID-609, *Investigations Activity Report (Intranet)* with all necessary information such as conversations regarding leads and tips, any indication of the person's knowledge of various laws affecting the business, or intelligence information that can be used in future criminal investigations. Should the inspection result in an administrative seizure, the inspection report should include at a minimum:

- date and location of the inspection;
- name of owner or representative who was present at the time of inspection;
- detail regarding the specific location of stock that was administratively seized;
- invoices that were provided (if any);
- discussion with the person regarding the purchase of the contraband cigarettes and/or tobacco products;
- confirmation of the explanation of the administrative seizure process to the person;
- detailed explanation outlining the reason for seizure; and,
- information given to or statements made by the person in control of the cigarettes or tobacco products that tend to demonstrate knowledge of the Cigarette and Tobacco Products Tax Law. Some R&T violations require specific intent; therefore it is important to document situations when the taxpayer demonstrates knowledge.

It is important that the ID-016 be completed in a clear and concise manner, and that it contain all pertinent information related to the business that was inspected. The information contained in the report might later be used as evidence in an active investigation or in future investigations. The ID-016 must be submitted before the end of the month in which the inspection occurred to the inspector responsible for the tracking of inspection data.

Cigarettes and/or tobacco products administratively seized will be secured in locked storage in the District Office until the EC acknowledges receipt of the products in accordance with established procedure (see the *Evidence chapter* of the ID Manual). In the event that the information provided on the BOE-1317 does not accurately reflect the actual products seized, an amended BOE-1317 will be created. Any cigarettes or tobacco products incorrectly seized should be personally returned. A new signature on the amended BOE-1317 must be obtained from the EC and the person's representative.

# INSPECTION PROCEDURE

## POST INSPECTION

(cont.) 405.075

Additionally, inspectors will complete a seizure package consisting of:

- the BOE-1238-ID, *Notice Of Seizure And Forfeiture* (Intranet);
- the BOE-1238-AID, *Verified Petition For Release Or Recovery Of Property* (Intranet);
- a copy of the ID-016;
- a copy of the BOE-1317 signed by the EC or Lead Inspector and the person or the person's representative;
- a copy of the IRIS screen TAR AI, Account Activity;
- a copy of the Legal Notice Conversion Calculator (Intranet) if tobacco products were seized; and,
- a draft copy of the Legal Notice (Intranet), available on the ID web site.

When completed, the description of property on the BOE-1238-ID should exactly match the description of items seized on the BOE-1317. The following are guidelines for completion of the BOE-1238-ID:

- a) In the "To" section – include the name(s) and addresses identified under each of the following business entities:
  1. **Corporation:** must be addressed to the mailing address of the DBA and to the Corporation's "Agent of Service" as identified in SOS records. If the corporation is inactive or suspended, the business will be treated as a partnership for 1238 mailing purposes.
  2. **Partnerships:** must be addressed to each partner at his/her individual mailing address, if known, and to the DBA at the mailing address of seizure.
  3. **Sole Proprietorships:** must be addressed to the DBA at mailing address of seizure, and the mailing address of the sole proprietorship identified on IRIS.
  4. **Married:** must be addressed to the husband and wife individually (even if at the same residential and/or business address) and to the DBA at the mailing address.
- b) Confirm that the address listed on the BOE-1238-ID, the BOE-1317, and the IRIS screen TAR AI are all the same. If the IRIS screen TAR AI is incorrect, then a BOE-220-I, *Account Maintenance/Referral* needs to be prepared.
- c) Include a copy of the BOE-220-I or handwritten notes by the inspector on the relevant IRIS screen that a change has been requested with the seizure package.
- d) Describe the property seized (should match the BOE-1317 description).
- e) Verify the value assigned to the seizure to ensure that it is reasonable and consistent with the seizure and complaint paperwork. The value should be the retail value of all product seized.
- f) Include a copy of all relevant pages of the most recent MSA list prior to the date of the seizure with all non-MSA seizures. Inspectors will forward this package to their lead or supervisor. Upon approval, the package will be forwarded to the Division Principal Auditor for review. After review, the Division Principal Auditor will send the seizure package to the Legal Department for approval and signature.

Upon receipt of form BOE-1238-ID from the Legal Department, the tax technician or designated person will:

- send the original BOE-1238-ID, the BOE-1238-AID and a copy of the BOE-1317 to the person from whom the cigarettes were seized;
- send the BOE-1238-ID, the BOE-1238-AID and a copy of the BOE-1317 to any other person who may have an interest in the property;
- retain a photocopy of the BOE-1238-ID and proof of mailing for the ID petition person;
- forward a photocopy of the BOE-1238-ID and proof of mailing to the Lead Inspector that did the seizure; and,
- forward the returned and signed Postal Service form 3811, *Domestic Return Receipt*, to the Lead Inspector that did the seizure.



## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### POST INSPECTION

(cont.) 405.075

The BOE-1238-ID shall be personally served or sent by certified mail to all persons known to have any rights, title, or interest in the property. If the amount of cigarettes seized is 61 cartons or more of 200 cigarettes each or an equivalent amount of tobacco products, a legal notice is required to notify others that may have an interest in the property seized. R&T 30437(b)(1) states that the Board shall include a notice of seizure and forfeiture on its web site for a period of six months from the notice of seizure. The web site notice shall include a description of the property, the brand name, the reason for the seizure and the time and place of the seizure. Inspectors will submit the electronic file of the notice of seizures to the ID Administrative Assistant.

Any person claiming an interest in the seized property may, within twenty (20) days of the date of personal service, mailing, or publication of the notice, file a verified petition requesting release or recovery of the property on the grounds that the property was erroneously or illegally seized. Petitioners may send petitions to the Board's P.O. Box, MIC:81. Any petition received by the ID should be forwarded to the Chief or his or her designee, who will forward it to the Chief of Board Proceedings. In addition, the ID Chief will provide copies to the HQ petition person.

Manufacturers may request an opportunity to review their brand cigarettes where the seizure was posted pursuant to R&T section 30437(b)(2) after the administrative appeals process has either been declined through lack of action or has been completed. The opportunity to review seized cigarettes to conduct non-destructive testing shall be coordinated at a time and place determined by the Area Administrators.

If an inspection resulted in an administrative seizure of products and/or a citation is issued to the business, and no open complaint against the business currently exists, field inspectors must open a complaint on the business.

If a random inspection resulted in no violation, the inspector must submit the Inspection File, including copies of all completed forms, to the lead person. If an inspection was due to an open complaint and resulted in no citation or seizure or any other action that needed follow up, the field inspectors should close the complaint and submit the complaint close out to the lead person.

### INSPECTION EXAMPLE

405.080

Upon entering the location, inspectors should use the information gathered to develop a picture of what the potential inspection should look like. As an example, consider the following scenario:

The background and investigative information gathered regarding a business to be inspected has revealed the following:

- The business is registered with the Board with a business classification code of "33" (grocery stores with beer and wine licenses).
- The business maintains a seller's permit and no other Board licenses or permits.
- The business reports on sales tax returns that 20% of their gross sales are taxable.

Based on this information, inspectors might expect to find the following at this business:

- A small retail stock of soda, beer, and wine because reported taxable sales are low.
- The business does not sell cigarettes, tobacco products, or distilled spirits because a business code of "33" denotes beer and wine sales only, and IRIS did not show that the taxpayer maintained a license for retail sales of cigarettes or tobacco products.
- A seller's permit displayed.
- A license displayed to sell beer and wine as issued by the Department of Alcoholic Beverage Control (ABC).

Instead, upon entering the business, inspectors find:

- A large retail stock of soda, beer, and wine.
- No license to sell beer and wine from ABC properly displayed.
- Tobacco products and counterfeit stamped cigarettes for sale.
- No invoices for the purchase of the tobacco products or counterfeit stamped cigarettes.

## INSPECTION PROCEDURE

### INSPECTION EXAMPLE

(cont.) 405.080

Given all of the above, inspectors should take the following steps:

- Send a completed BOE-1164, *Audit Memorandum of Possible Tax Liability* (Intranet), to the district office of registration because a large retail stock of taxable products (soda, beer, wine, cigarettes, and tobacco products) should result in a significantly higher percentage of gross sales being taxable.
- Seize the counterfeit stamped cigarettes under California Business and Professions Code (B&P) §22974.3(a) or B&P §22978.2(a).
- Seize the untaxed tobacco products under B&P §22974.3(b) or B&P §22978.2(b). The tobacco products are presumed untaxed under California Business and Professions Code (B&P) §22974.3(b) because the person could not establish the contrary by providing purchase invoices from a licensed distributor.
- Seize any cigarette or tobacco products under R&T §30436(e). Section 30436(e) allows the seizure of cigarettes or tobacco products affixed with cigarette tax stamps or for which tax had been paid in violation of section 30165.1. Section 30165.1 prohibits a person from affixing any stamp or meter impression to a package of cigarettes or paying the tax on a tobacco product unless the brand families of cigarettes or tobacco products are certified by the State Attorney General as a participating manufacturer at the time of inspection.
- Write a citation for the following violations:
  - B&P §22974.3(a) for possession of counterfeit stamped cigarettes.
  - B&P §22974.3(b) for possession of untaxed tobacco products.
  - B&P §22974 for failure to keep purchase records for up to one year at the retail location.
  - B&P §22980.2 for operating without a valid license.
- Send a BOE-220-I, *Account Maintenance/Referral* (Intranet), with information about unlicensed person to Excise Taxes & Fees Division.
- Send an outside agency referral to the Department of Alcoholic Beverage Control.
- Open a complaint using the ID-600, *Investigative Complaint* (Intranet), unless a complaint currently exists, to document and track the seizure.

### SUSPENDED OR REVOKED CIGARETTE AND TOBACCO ACCOUNTS

405.085

The Excise Taxes and Fees Division (FTFD) staff will notify the ID Area Managers of all suspended or revoked accounts by email. The email notifications are to be titled, "Final Suspension List" and will be forwarded to supervisors for assignment to appropriate inspection staff. All suspended or revoked accounts shall be inspected. Suspension periods range from 10 to 30 days. Staff is required to inspect during the time period of the suspension.

ID staff shall verify accounts identified as suspended by ETD email notices prior to conducting the inspection by checking the Violations Tracking System during the suspension period. Suspended accounts are occasionally dropped from the notice of suspended accounts due to an accepted late appeal. Late appeals are not accepted after the final suspension list is emailed to the ID area managers and other interested parties.

Inspectors assigned to conduct suspension or revocation inspections shall first attempt to make an undercover purchase of cigarettes or tobacco products.

Factual Scenario One: No purchase, no product in retail stock in plain view

- If the owner advises the inspector that they currently do not sell cigarettes or tobacco products, and no cigarettes or tobacco products in retail stock are observed in plain view, the inspector shall leave the location and document the attempt on an ID-016.

Factual Scenario Two: No purchase, product in retail stock in plain view

- If the retailer declines to make the sale but cigarettes or tobacco products in retail stock are observed in plain view, the inspector shall provide the retailer with identification and request an inspection of stock and invoices pursuant to Business and Professions Code (B&P) Code section 22980. Findings From the inspection shall be forwarded to the complaint file, including forms ID-16, 16A, ID-609, along with a copy of the citation, if applicable.

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## **SUSPENDED OR REVOKED CIGARETTE AND TOBACCO ACCOUNTS** (cont.) **405.085**

### Factual Scenario Three: Purchase and product in retail stock

- If the retailer makes a sale to the investigator, the investigator shall leave the premises and label and bag the evidence in a small evidence bag. After completion of this procedure, the investigator is to return to the retail location with an LPO to cite the location with a violation of B & P Code sections 22981 and 22980.2, subd. (c). The staff shall follow current citation procedures and conduct a seizure of all cigarette and tobacco products in retail stock after receiving approval from the Area Administrator.

All undercover purchase attempts and re-inspections of suspended or revoked accounts involving staff contact with a taxpayer or a taxpayer's representative are to be documented on an ID-16 and to be entered in the IZ database.

### Verification of Seized Product

Product seized under B & P Code section 22980.2(c) is forfeited to the State. All product seizures conducted under this code section shall be documented on a BOE-881, *Property Receipt* (Intranet). The BOE-881 shall include sales tax account number, DBA and (expired, suspended or revoked) cigarette and tobacco license number, if applicable. This form shall be completed by an inspector, who shall verify the inventory of products seized and sign the form as the "Evidence Collector." The LPO also is to verify the inventory seized and is required to sign the form as the "Witnessing Officer." The staff shall provide the pink copy of the BOE-881 to the taxpayer or his/her representative prior to leaving the business premises.

The staff shall transfer the seized inventory into the custody of the EC, and provide the canary copy of Form BOE-881 to him/her. The EC shall verify the reported inventory is accurate and sign Form BOE-881. The EC is required to notify the Area Manager of any discrepancy between the inventory and the inventoried amounts reported on Form BOE-881. The Area Manager and/or designee shall conduct an inquiry into the discrepancy and prepare a report of findings to the Chief of ID

Leads are to input the BOE-881 seizure into the IZ database and include a comment on the BO E-881 that the seizure was conducted. Another copy of the BOE-881 is to be provided with the team's monthly report as verification that the ITS database was reconciled against the Investigations Tracking System. This copy of the BOE-881 is to be maintained as backup for the ID monthly widget report.

## **AB 71 NON-RENEWAL ACCOUNTS**

**405.090**

Periodically, staff will be provided a list of retailers that have not renewed their LRQ licenses. Excise Taxes Division (ETD) mails close-out letters to retailers notifying them that their license has been closed-out for failure to file their application renewal. This list will be used to facilitate AB 71 inspections as inspections will be conducted on all LRQ accounts that have not renewed their license.

The list includes the taxpayer's name, location address, city, and zip code. Each account is also marked with either an "M" or "L" which indicates whether the account is a master account or location account. Therefore, there will be multiple listings for the same address. The list also indicates, under the master account, the number of active accounts and the total number of locations. The accounts that are marked with an asterisk in front of the business name have been closed by ETD.

## **PROCEDURE**

**405.095**

Lists will be forwarded to staff to perform AB 71 licensing compliance inspections. The list will be sorted by city for each team to work their respective areas. Prior to inspections, staff will verify, via IRIS, that the LRQ license has not been recently renewed. If the inspector finds an expired LRQ license displayed during the inspection, he or she should request that the retailer surrender the expired LRQ license. Inform the retailer of the violation of operating without a license and provide a five business day notice to obtain a license or a citation may be issued.

Although retailers can be cited for failure to display a valid license (B&P Code §22974.5), for unlicensed sales of cigarettes and tobacco (B&P Code §22980.2(a)), and for any other citation that is warranted, inspectors should refer to current policy. Currently, staff is not authorized to administratively seize any tax-paid products under B & P §22980.2(c) for a licensing non-renewal.

## **INSPECTION COMPLAINTS**

**405.097**

Investigators are expected to conduct themselves in a professional, respectful, and ethical manner at all times. If however, a business owner believes that the conduct of an investigator during the performance of his or her duties is improper, the business owner may decide to contact the ID to file a complaint against the investigator. See the *General Administration chapter* of the Investigations Division's Policy and Procedures Manual for procedures in handling complaints resulting from an inspection.

## INSPECTION PROCEDURE

### CITATIONS

**410.000**

#### ASKING FOR IDENTIFICATION

**410.005**

~~Prior to contacting the supervisor,~~ The LPO shall request to see identification of the person in control of the premise at that time. If the person in control of the premise at that time is not the owner, the LPO will attempt to contact the owner and request his/her presence. The LPO shall request the owner to provide identification also. This identification will then be used to fill out the citation.

If the owner does not provide picture identification, then the LPO shall request a thumbprint of the person. The thumbprint is placed on the backside of the Court copy of the citation. Only the owners or partners of the business are to be thumb printed. Persons in control of the business that are not the owner or partner shall not be thumb printed.

When contacting his/her supervisor to determine if a citation shall be issued, the LPO will advise the supervisor if the individual refuses to provide identification. Additionally, the LPO will include detailed information on the exchange with the individual in the ID-504, *Citation Statement of Facts* (Intanet).

#### DETERMINING WHETHER OR NOT A CITATION SHOULD BE ISSUED

**410.010**

During the course of an inspection, ~~the~~ inspectors will note all violations observed. When violations are noted, the LPO will contact their supervisor (or designee) from the location with a recommendation for a citation and specific violations.

The supervisor, or designee, will then determine if a citation shall be written, whether the citation will be civil or criminal, and which violations will be cited.

If after a diligent attempt a supervisor cannot be reached, the LPO will make the determination of whether or not to write a citation. The LPO will then contact his/her supervisor at the first possible opportunity and inform him/her of what has occurred.

#### THE OWNER IS A PARTNERSHIP OR A CORPORATION/LLC

**410.015**

In the event that the owner is a partnership or a corporation/LLC, ~~some~~ special procedures apply. The citation for these entities will only be written to one of the partners or officers. The LPO will note the type of business organization in the ID-504. The pre-inspection information obtained from IRIS by the inspectors will show the type of business structure, and the officers or partners. If only one of the partners or officers is present, then the citation will be written to that person. If two or more are present, then the citation will be written to the highest ranking partner or officer present (i.e., if the President and Secretary are both present, then only the President would receive the citation.). In the event that the LPO cannot determine who the highest-ranking officer is, the LPO will issue the citation to any of the officers or partners present at the time.

After the citation has been written, the LPO will verify the status of the corporation on the Secretary of State's web site (<http://kepler.ss.ca.gov/list.html>). The LPO will include the web site page that contains the information of the corporation's agent for service in the citation.

If no partners or officers are present at the time of the citation, the citation will be written to the highest ranking person on record (see section 415.000 for criminal citations and section 420.000 for civil citations.)

#### IF AN INDIVIDUAL BECOMES VIOLENT OR THREATENING

**410.020**

*The personal safety of the ID staff is a priority. If at anytime during the inspection and/or in the course of issuing a citation an individual should become violent or threatening, ID staff should leave the premises immediately. Once they are in a safe location, the LPO should contact his/her supervisor (or designee). The supervisor will advise the LPO whether or not to contact local law enforcement, and what steps should be taken next. If immediate safety is threatened, staff should contact 9-1-1 immediately.*

#### PLACING FLAG "C" ON ALL CITATIONS ISSUED (CIVIL AND CRIMINAL)

**410.025**

ID staff will place a Flag C on all accounts issued a civil or criminal citation. The placement in IRIS of the Flag C on cited accounts will assist the ETD as well as Sales and Use Tax Department (SUTD) staff in identifying accounts that require special attention. This should reduce account changes in ownership which are being made for the sole purpose of avoiding cigarette and tobacco product violations and penalties.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### PLACING FLAG “C” ON ALL CITATIONS ISSUED (CIVIL AND CRIMINAL) (cont.) 410.025

When specific IRIS screens relating to these identified accounts are accessed by the District or Headquarters staff, the screens will display the message “Supervisory Review” with the notation “Flag C” displayed in the upper left hand corner of the screen.<sup>1</sup>

### FLAGGING PROCEDURES 410.030

The following steps shall be followed when placing flags on all identified accounts.

Step	Who	Action
1	Investigators/Inspectors	<ul style="list-style-type: none"><li>When a citation has been authorized by a supervisor and issued, investigators shall notify their Lead, and provide him/her with the citation type (civil or criminal), citation number, taxpayer’s name, and their SR and LRQ account number.</li></ul>
2	Leads	<ul style="list-style-type: none"><li>When a Lead has been advised of a citation, he/she is responsible for notifying within 24-hours, via e-mail, the two Business Taxes Specialist IIs reporting to the Chief of ID, who will then flag the account in IRIS.</li></ul>
3	Business Taxes Specialist II (BTS II)	<ul style="list-style-type: none"><li>When a citation has been entered into IRIS, the ETD will send both BTS IIs notification to remove the Flag C from the account. The Flag C may be removed earlier only with the authorization of the appropriate Area Administrator or Chief.</li></ul>

### CRIMINAL CITATIONS 415.000

#### PRIOR TO WRITING THE CITATION 415.005

Once it is determined that a citation will be written, the LPO at the location will contact the local California Highway Patrol (CHP) dispatch office and request Due Diligence on the person in control of the business at that time. Investigators/Inspectors only request “Due Diligence” on the owner. If the person in control claims not to have identification, the CHP must be advised. Additionally, the LPO shall provide CHP with information regarding whether or not the person has agreed to submit a thumbprint. This will give CHP the opportunity to respond if deemed necessary after a criminal history check. *If the person has an outstanding warrant, CHP may choose to effect an arrest. If the person has an outstanding warrant and the CHP chooses not to effect an arrest, under no circumstances will the LPO effect an arrest.*

Regardless of the outcome of the Due Diligence request, the citation will be issued according to ID procedures. All information regarding the Due Diligence inquiry shall be noted in detail on the ID-504.

#### WRITING THE CITATION 415.010

Each citation issued should be written with a ballpoint pen using a firm writing foundation and sufficient pressure to make legible copies, and must be signed by the LPO preparing the citation.

The LPO will write the citation at the location of the violation(s). The citation will be filled out in its entirety (Exhibit 3 through Exhibit 8). The citation will include information on the proper court for that jurisdiction and an appearance date and time prearranged with the court (or District Attorney’s Office) or upon notification of the court.

This information will vary depending on the jurisdiction. It is the responsibility of the Lead to obtain the appropriate DA information for the inspection location jurisdiction prior to conducting inspections in the area. DA requirements are available on the Court Tracking Database maintained by the ID. The subject’s right thumbprint, when required, should be placed on the criminal citation.

Note: On the BOE-55, *Notice to Appear*, the “Race/Ethnicity” box will not be completed unless required by the Prosecuting Attorney in that jurisdiction.

The LPO will always leave his/her business card at a location where a citation was written, and encourage the owner to contact him/her if they have any questions or concerns.

<sup>1</sup> The flag does not prohibit the user from accessing the account or making changes. It is simply a warning to check with your supervisor before proceeding with an account.

## INSPECTION PROCEDURE

### DISTRIBUTION OF CRIMINAL CITATIONS

**415.015**

Criminal Citations (BOE-55 and BOE-56) will be distributed as follows:

- White – Court
- Pink – ID
- Green – Excise Taxes
- Yellow – Violator

### VOIDING A CRIMINAL CITATION

**415.020**

A citation will be voided when any of the following errors are discovered:

- Error on the date
- Error on the name of the subject
- Error on the address of the citation
- Error on the code and section information

A voided citation will be clearly marked by showing the reason and printing the word “VOID” or “CANCELLED” in ink across the face of all copies available.

Every voided citation must bear the signature of a supervisor on the voided citation. The citation must indicate the replacement citation number, when applicable. The “VOID” or “CANCELLED” citation, in its entirety, is to be sent to the ID Chief within seven working days for dissemination to the appropriate staff member. Additionally, the voided citation will need to be reported on the ID-500, *Unused Citations* for the month in which the void occurred (Intranet).

### CORRECTION OF A CRIMINAL CITATION

**415.025**

A citation may be corrected without the necessity of issuing a replacement citation for other areas of the citation except error on the date, the name of the subject, the address of the violation or the codes and section information.

Errors may be corrected by lining out the incorrect entry while still leaving it legible and making a corrected entry. The use of correction fluid or tape on a citation is not allowed.

Errors may not be corrected if they are found after delivery of the subject’s copy. When an error is found after the delivery of subject’s copy, a letter shall be mailed to the subject explaining the error, the withdrawal of the citation and/or that the subject no longer needs to appear in court.

### THE OWNER, PARTNER, OR OFFICER IS NOT PRESENT

**415.030**

If the owner cannot be reached, or if the owner refuses to be present, the LPO will write the citation, noting that the owner was not present both in the signature block and in the ID-504. The LPO will leave a business card with contact information at the location. A copy of the citation will not be left at the location. The “Violator’s” copy will be forwarded with the “Court” copy to the DA responsible for misdemeanor intake in the court jurisdiction of the location in violation.

The DA will notify the owner of hearing instructions at a later time.

### THE OWNER IS PRESENT

**415.035**

If the owner is present, the LPO will write the citation as above. The owner will be asked to sign the citation. A thumbprint will be requested on the reverse side of the “Court” copy for those jurisdiction that require one or if identification is questioned. The owner will then be given the “Violator’s” copy of the citation and the LPO’s business card.

If the owner refuses to sign the citation, or refuses to give his/her thumbprint, the LPO will explain the consequences of not signing or providing a thumbprint. (For example, the owner would be advised that he/she will not receive a copy of the citation at this time, his/her copy will be forwarded to the DA. Additionally, the owner will be advised that their refusal to sign would be noted on the citation and in the report provided to the DA.) The citation will then be presented to the DA with a notation of the refusal to sign, both in the signature block of the citation, and in the investigative report. The owner will not be given a copy of the citation by the LPO at this time. The “Violator’s” copy will be forwarded with the “Court” copy to the DA. The DA will contact the owner at a later time with instructions. The LPO will leave a business card with the owner.

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## AFTER A CRIMINAL CITATION IS WRITTEN

415.040

When a citation has been written, the following procedures will apply:

Step	Who	Action
1	LPO	<ul style="list-style-type: none"> <li>◆ Prepare the ID-504, ID-504-A, <i>Statement of Facts Exhibit Inventory (Intranet)</i>, the ID-609, the BOE-1238-ID, <u>which may be prepared by the co-inspector</u>, and the ID-610, <i>Outside Agency Database Search</i>.</li> </ul> <p>Forward the BOE/ID copy, BOE/ETD copy, and the “Court” copy of the citation to his/her supervisor with the signed ID-504, ID-504-A, ID-609, ID-016, a copy of the BOE-1317 (if applicable), BOE-1238-ID, ID-610 and printouts of the SR Permit (TAR AI screen); the LRQ permit (SPR AI screen) and the LR permit (SPR AI screen) within 7 working days from the date of the issuance of the citation.</p>
2	Supervisor <u>(or designee)</u>	<ul style="list-style-type: none"> <li>◆ Review the citation, the ID-610, ID-016, and the ID-504, and then sign the ID-610.</li> <li>◆ Make a copy of the ID-016, and the ID-504.</li> <li>◆ Return the “Court” copy of the citation, the ID-016, and the ID-504 to the Lead Inspector that issued the citation.</li> <li>◆ Forward the ID-610, the copies of the ID-016, ID-1317, and ID-504, and the BOE/ID and BOE/ETD copies of the citation to the CLETS database operator at ID Headquarters within 10 working days from the date the citation was issued. Supervisors shall forward the citations under a signed cover memo to verify specifically what citations are being forwarded, and that they have been reviewed.</li> </ul>
3	CLETS Searcher	<ul style="list-style-type: none"> <li>◆ Forward the copies of the ID-016, ID-1317, and the Investigative Report, along with the BOE/ID and BOE/ETD copies of the Citation, to the Citation Tracking Database Operator (CTDO) at ID Headquarters for information tracking and input to the ID Citation Tracking Database.</li> <li>◆ Pull all of the reports requested on the ID-610 (see Outside Agency Database Search Procedures).</li> <li>◆ Return the requested reports to the Lead Inspector of the team that issued the citation.</li> </ul>
4	CTDO	<ul style="list-style-type: none"> <li>◆ Enter the citation information into the ID Citation Tracking Database.</li> <li>◆ File the BOE/ID and BOE/ETD copies of the citation with the copy of the ID-016, copy of the ID-1317, the ID-504, copy of the disposition and the copy of the Investigative Report. These files will be maintained in ID Headquarters and organized by Citation number.</li> </ul>
5	<u>LPO Issuing Cite</u>	<ul style="list-style-type: none"> <li>◆ Assemble a citation package that meets all of the requirements of the DA for the applicable jurisdiction. This package should also include the Violator’s copy of the citation if it was not given to the owner at the location.</li> </ul>
6	Lead Inspector	<ul style="list-style-type: none"> <li>◆ <u>Deliver the citation package to the DA.</u></li> <li>◆ Follow up with the court on the outcome of each citation submitted.</li> <li>◆ Obtain a written disposition from the court.</li> <li>◆ Forward the disposition reports to the CTDO on a monthly basis.</li> </ul>
7	CTDO	<ul style="list-style-type: none"> <li>◆ Run a report every 2 weeks that shows all criminal citations that</li> </ul>

## INSPECTION PROCEDURE

		<p>have been in the Citation Tracking Database over eight weeks and have not yet had a disposition sent to HQ.</p> <ul style="list-style-type: none"> <li>◆ Follow up with the Lead Inspector of each team regarding the disposition of the citations that are over eight weeks old. A cc should be sent to the Area Administrator and Supervisor on all follow-up inquiries.</li> <li>◆ Input the disposition information into the Citation Database.</li> <li>◆ Make a copy of the Disposition.</li> <li>◆ File the Disposition with the citation file with the BOE/ID copy of the citation.</li> <li>◆ If the citation is upheld, forward the BOE/ETD copy of the citation along with the copy of the Disposition to the Excise Taxes Division.</li> </ul>
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### CIVIL CITATIONS

**420.000**

#### WRITING THE CITATION

**420.005**

Each citation issued should be written with a ballpoint pen using a firm writing foundation and sufficient pressure to make legible copies, and must be signed by the LPO preparing the citation.

The LPO will write the citation at the location of the violation(s). The citation must be filled out in its entirety (Exhibits 9 & 10 ). The citation document informs the owner that the Board will notify him/her with further instructions on appeal or payment options.

The LPO will always leave him/her business card at a location where a citation was written.

#### DISTRIBUTION OF CIVIL CITATIONS

**420.010**

Civil Citations (BOE-98 and BOE-99) shall be distributed as follows:

- White – Excise Taxes
- Pink – ID
- Yellow – Business Owner

#### VOIDING A CIVIL CITATION

**420.015**

A citation will be voided when any of the following errors are discovered before delivery of the citation to the subject:

- Error on the date
- Error on the name of the subject
- Error on the address of the violation

A voided citation will be clearly marked by showing the reason and printing the word “VOID” or “CANCELLED” in ink across the face of all copies.

Every voided citation must bear the signature of a supervisor on the voided citation. The citation must indicate the replacement citation number, when applicable. The “VOID” or “CANCELLED” citation, in its entirety, is to be sent to the ID Chief with in seven working days for dissemination to the appropriate staff member. Additionally, the voided citation will need to be reported on the ID-500 for the month in which the voidance occurred.

#### CORRECTION OF A CIVIL CITATION

**420.020**

A citation may be corrected without the necessity of issuing a replacement citation for all areas of the citation except error on the date, the name or the address of the violation.

Errors may be corrected by lining out the incorrect entry while still leaving it legible and making a corrected entry. The use of correction fluid or tape on a citation is not allowed.

If the error is found after delivery of the subject’s copy, it may be corrected on the ID’s copy. When a correction of this type is made, a copy of the corrected citation shall be mailed to the subject with a brief letter explaining the changes made.



## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### THE OWNER, PARTNER, OR OFFICER IS NOT PRESENT 420.025

If the owner cannot be reached, or if the owner refuses to be present, the LPO will write the citation, noting in the signature block of the citation and in the ID-504 that the owner was not present. The "Business Owner" copy of the citation and the LPO's business card will be left at the location. A copy of the citation will be mailed to the master account mailing address if it is not the same as the LRQ location.

### THE OWNER IS PRESENT 420.030

If the owner is present the LPO will write the citation. The owner will be asked to sign the citation. The owner will then be given the "Business Owner" copy of the citation and the LPO's business card.

If the owner refuses to sign the citation, the LPO will note that the owner refused to sign both in the signature block of the citation, and in the ID-504. The owner will be given the "Business Owner" copy of the citation and the LPO's business card.

### THE ID-504, CITATION STATEMENT OF FACTS - NARRATIVE CONTENT 420.035

Prior violations that resulted in a civil or criminal citation are the only prior violations that need to be documented on the ID-504. The ID-504 signed by the LPO will only present facts as they relate to the current inspection, unless citations have been written and the status of the prior citation has been marked with the designation final in the Violations Tracking System. Therefore, investigators will need to include a review of the Violations Tracking Systems as part of their background research prior to conducting a retail inspection.

### EXPERT SCANNER WITNESS 420.040

Any requests to staff to provide an expert witness to testify in court concerning the SICPA® scanners' technology and reliability will be submitted to the Northern California Area Administrator (NCAA). The NCAA will make all the necessary arrangements with SICPA® to have the expert witness available to testify.

### AFTER A CIVIL CITATION IS WRITTEN 420.045

When a civil citation has been written, the following procedures will apply:

Step	Who	Action
1	LPO	<ul style="list-style-type: none"> <li>◆ Prepare an ID-504.</li> <li>◆ Submit the citation report top down, in the following order: ID-403, Citation, signed ID-504, ID-504-A, ID-609, ID-016, ID-1317 (if applicable and signed by Evidence Custodian or LPO), unsigned BOE-1238-ID and printouts of the SR Permit (TAR AI screen); the LRQ permit (SPR AI screen), which identifies location of violations(s), and the LR "Master" permit (SPR AI screen). For sole proprietor businesses, the LR may show the same address as the location of the LRQ; however, the printout is still required, as HQ ID will be sending copies of cities to the master locations (LRs), when the location is different from the location cited (LRQs).</li> </ul>
2	Supervisor	<ul style="list-style-type: none"> <li>◆ Review the citation package for professionalism and completeness.</li> <li>◆ Sign and forward the package to the CTDO at ID Headquarters within 10 working days from the date the citation was issued. Supervisors shall forward the citations under a signed cover memo to verify specifically what citations are being forwarded, and that they have been reviewed.</li> </ul>
3	CTDO	<ul style="list-style-type: none"> <li>◆ Enter the citation information into the ID-Citation Database.</li> <li>◆ Forward the Excise Taxes and Fees Division copy of the citation and the ID-609, the ID-1317, the BOE-1238-ID, and the ID-504 to the Excise Taxes Division.</li> <li>◆ File the ID copy of the citation with the copy of the ID-016, copy of the ID-1317, the BOE-1238-ID, the ID-609, IRIS screen prints, and the ID-504. These files will be maintained in ID Headquarters and organized by Citation number.</li> </ul>

## INSPECTION PROCEDURE

### MULTIPLE LICENSE OFFENSES

**420.050**

Occasionally, citations are being written where an entity has committed an offense on more than one license, for example as both a licensed distributor (LD Q) and a licensed retailer (LR Q). When this occurs, the ETD has requested that the ID clarify which license a violation is against; as in the above example, whether the violation is against the distributor's license or the retailer's license. When this occurs, the person filling out the citation should place a (D) for distributor, (R) for retailer, (W) for wholesaler, or (M) for manufacturer/importer at the end of the description of the "code and section" area on the citation form.

The following procedure is to be followed for both civil and criminal citations.

Step	Form	Action
1	BOE-98, <i>Civil Citation</i>	<ul style="list-style-type: none"> <li>Complete all applicable boxes paying particular attention to the <i>CIGARETTE/TOBACCO SELLER'S LICENSE NO.</i> box. This box is to be completed using the entity's LD Q number.</li> <li>List the distributor code and all sections violated in the area entitled <i>VIOLATION INFORMATION</i>. Place a (D) after each section description.</li> <li>Complete all other sections as necessary.</li> </ul>
2	BOE-99, <i>Civil Citation Continuation</i>	<ul style="list-style-type: none"> <li>Beneath the form title and next to the <i>NO.</i> printed at the top of the form, write the LR Q number.</li> <li>Next to the <i>NO.</i> at the top of the citation, the citation number from the BOE-98 should be written down followed by the letter (A) [Addendum].</li> <li>List the retailer code and all sections violated in the space provided. Place a (R) after each section description.</li> <li>Complete all other sections as necessary.</li> </ul>
Step	Form	Action
1	BOE-55, <i>Notice to Appear</i> (Criminal Citation)	<ul style="list-style-type: none"> <li>Complete all applicable boxes paying particular attention to the <i>COMMENTS</i> box. This box is to be completed using the entity's LD Q number.</li> <li>List the distributor code and all sections violated in the space provided. Place a (D) after each section description.</li> <li>Complete all other sections as necessary.</li> </ul>
2	BOE-56, <i>Continuation of Notice to Appear</i> (Criminal Citation)	<ul style="list-style-type: none"> <li>Beneath the form title and to the left of the <i>MISDEMEANOR</i> box, write the LR Q number.</li> <li>Next to the "No." at the top of the citation, the citation number from the BOE-55 should be written down followed by the letter (A) [Addendum].</li> <li>List the retailer code and all sections violated in the space provided. Place a (R) after each section description.</li> <li>Complete all other sections as necessary.</li> </ul>

### MONTHLY CITATION REPORTS

**425.000**

On the morning of the first working day of each month, all LPOs issued citation books will complete and sign the ID-500, *Unused Citations* and turn it into the supervisor.

On the first working day of each quarter, the LPO will turn in the ID-500, together with the citation books, for the supervisor's physical verification of unused citations and signature.

See the *General Administration* chapter of the ID's Policy and Procedures Manual for supervisors' detailed responsibilities.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **CITATION TRACKING**

**430.000**

Effective July 1, 2006, Northern and Southern ID Areas are to complete the citation tracking data worksheet. The worksheets are to be submitted via e-mail to the Chief of ID's designated BTS II. The worksheets are due to the BTS II on or before the last day of the month following the end of the quarterly period. For example, the submission for the quarterly period July 1, 2006, through Sept. 30, 2006, would be due to the BTS II on or before Oct. 31, 2006.

Confidential text removed

### **PETITIONS ON ADMINISTRATIVE SEIZURES OF CIGARETTES AND TOBACCO PRODUCTS**

**440.000**

The ID will handle all the petitioned Administrative Seizures of cigarettes and tobacco products through the entire appeals process. This process starts when notification is received from Board Proceedings that the taxpayer has filed a petition for release of seized property. It is imperative that these petitions be handled on a priority basis so that the petitions can be scheduled for hearing within sixty (60) days from the date of the petition.

The process is abbreviated because these petitioned cases are heard directly by the Board Members instead of going through a succession of steps that are available to taxpayers in the normal appeals process. A Reply to Petition for Release of Seized Property (Reply to Petition) is prepared by ID detailing the chronology of events leading to the seizure along with legal support for its position that the seized cigarettes and/or tobacco products should not be returned to petitioner. An Appeals Attorney reviews the Reply to Petition and prepares a Board summary along with a recommendation for the Board Members. The case will then be scheduled for the next Board meeting.

## INSPECTION PROCEDURE

### PETITIONS ON ADMINISTRATIVE SEIZURES OF CIGARETTES AND TOBACCO PRODUCTS

(cont.) 440.000

The following procedures outline the responsibilities delegated to the staff for handling petitions on administrative seizures.

Step	Who	Action
1	ID Petitions Person	<ul style="list-style-type: none"> <li>Upon notification of the taxpayer's petition for release of the seized property by Board Proceedings, e-mails the investigator and immediate supervisor with a copy to the Area Administrator requesting copies of the seizure package including the BOE-1238-ID, <i>Notice of Seizure and Forfeiture</i>, the BOE-1317, <i>Receipt for Property Seized</i>, the ID-504, <i>Citation Statement of Facts</i>, the ID-609, <i>Investigation Activity Report</i>, and verification and receipt/proof of mailing.</li> <li>E-mails EC to prepare detailed inventory of seized items on the ID-16-A(Sup) and ID-16-B(Sup).</li> </ul>
2	Investigator	<ul style="list-style-type: none"> <li>Complies with the request by e-mailing the requested documents.</li> </ul>
3	ID Petitions Person	<ul style="list-style-type: none"> <li>Upon receiving the documents, forwards copies of the BOE-1238-ID, BOE-1317 and the verification and receipt/proof of mailing to Board Proceedings by way of a memo with a copy to the ID Chief and the Assistant Chief Counsel of the Legal Department and the Settlement and Administration Section.</li> <li>Prepares a petition file.</li> </ul>
4	Board Proceedings	<ul style="list-style-type: none"> <li>Reviews the petition to determine if the petition was timely in accordance with the notification and mailing documents.</li> <li>Upon determining that the petition is complete, notifies ID.</li> <li>If the petition is not complete, follows up with the petitioner to correct any deficiency. Five (5) days are allowed for this step of the process.</li> <li>If the petitioner has not made his contentions known, sends a letter requesting petitioner to provide the contentions or to provide documentation and arguments in support of his claim. If petitioner's contentions or supporting documentation are received, sends the contentions to the ID Petitions Person. If no contentions or supporting documentation is received, sends acknowledgement letter to petitioner with a copy to ID informing petitioner that the case will be placed on the Board's consent calendar and petitioner will be notified of the Board's decision. Twenty (20) days are allowed for this step of the process.</li> </ul>
5	ID Petitions Person	<ul style="list-style-type: none"> <li>Prepares the Reply to Petition and submits it to ID Attorney for review.</li> </ul>
6	ID Attorney	<ul style="list-style-type: none"> <li>Reviews the Reply to Petition and makes legal corrections if warranted and returns the document to ID Petitions Person. Five (5) days are allowed for this step of the process.</li> </ul>
7	ID Petitions Person	<ul style="list-style-type: none"> <li>Reviews and makes the changes, if any, as per the recommendation of the ID Attorney.</li> <li>Prepares a memo and forwards the final version of the <i>Reply to Petition</i> to Board Proceedings Division.</li> <li>Completes petition files. One (1) day is allowed for this step of the process.</li> </ul>
8	Appeals Attorney	<ul style="list-style-type: none"> <li>Prepares a Board summary with a recommendation for Board action.</li> <li>Sends copy of the Board summary to Board Proceedings.</li> </ul>
9	Board Proceedings	<ul style="list-style-type: none"> <li>Schedules case for Board Hearing.</li> <li>Sends copy of the Board summary to Board members.</li> </ul>
10	ID Petitions Person	<ul style="list-style-type: none"> <li>Represents the Division at the Board Hearing.</li> </ul>

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

		<ul style="list-style-type: none"> <li>• Notifies the ID Chief of the Board's decision.</li> </ul>
11	Board Proceedings	<ul style="list-style-type: none"> <li>• Prepares and sends letter informing petitioner of the Board's decision.</li> <li>• Sends file to ID</li> </ul>
12	ID Petitions Person	<ul style="list-style-type: none"> <li>• Consolidates case file from the Board's Case Management Section with ID Administrative Seizure Petition case file and sends the file for storage. ID maintains all Administrative Seizure petition files.</li> </ul>

### CIVIL CITATION HEARINGS

**445.000**

When a civil citation is issued for a violation of any of the B&P Codes, a petition may be filed with ETD to refute the violation(s) within ten days from the date of the citation. ETD is responsible for scheduling and hearing the appeal at the first level. Hearings are usually scheduled at the end of the month. The first level in the appeals process will normally be a telephone conference with the petitioner, his/her representatives, an ID hearing person and an ETD hearing officer. The ETD hearing officer will issue a Citation Hearing Recommendation within two weeks after the hearing. ***Depending upon the recommendation by the ETD Hearing Officer, either the petitioner or ID may appeal the recommendation within ten days from the date of issuance of the Citation Hearing Recommendation.***

The following are the responsibilities delegated to the staff for handling petitioned civil audits.

Step	Who	Action
1	ID Hearing Person	<ul style="list-style-type: none"> <li>• Receives a copy of the BOE-408, <i>Notice of Violation/Request for an Appeals Hearing</i>, from ETD. (If a petition is received by ID from the taxpayer, makes a copy and sends the original to ETD.)</li> <li>• Gives the copy of the petition to the ID Administrative Assistant and requests the creation of a hearing file folder.</li> </ul>
2	ID Administrative Assistant	<ul style="list-style-type: none"> <li>• Prepares a manila folder file with the name and account number on the tab.</li> <li>• Makes copies of the BOE-98 and all accompanying documentation for the file. These accompanying documents will include copies of the BOE-408, ID-504, BOE-1317, ID-609, the ID-016, and ID-016A, <i>Compliance Inspection Report</i>, and the IRIS registration printouts for any permits held by the petitioner.</li> <li>• Returns file folder to the ID Hearing Person.</li> </ul>
3	ID Hearing Person	<ul style="list-style-type: none"> <li>• Reviews the hearing file folder for completeness.</li> <li>• Requests additional documents as needed.</li> <li>• Completes the Citation Hearing Information Sheet in preparation for the hearing.</li> </ul>
4	ETD	<ul style="list-style-type: none"> <li>• Forwards a copy of the taxpayer's petition to ID hearing person.</li> <li>• Forwards to ID copies of any subsequent documentation received from the petitioner.</li> <li>• Schedules hearing and notifies ID of the hearing dates.</li> </ul>

## INSPECTION PROCEDURE

5	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews documentation in the folder preparatory to appearing at the hearing.</li> <li>Reviews and files any additional documentation received from ETD or the petitioner.</li> <li>Contacts the investigator and/or ETD for any additional information if needed.</li> <li>Attends hearing and takes notes of any additional contentions advanced by the petitioner and/or his representative. (These notes will help in the preparation for the next appeals hearing level if an appeal is filed by petitioner or ID).</li> <li>Presents ID's position with respect to the citation violation(s).</li> </ul>
6	ETD Hearing Officer	<ul style="list-style-type: none"> <li>Issues a Citation Hearing Recommendation.</li> </ul>
7	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews the Citation Hearing Recommendation.</li> <li>Files an appeal of the Citation Hearing Recommendation if warranted.</li> <li>Files the Citation Hearing Recommendation in the file.</li> <li>If no appeal is necessary, maintains the file folder for one year prior to sending it to the ID warehouse.</li> </ul>
8	EC	<ul style="list-style-type: none"> <li>Maintains Citation File Folder until authorization is received from the ID Hearing Person for its destruction.</li> </ul>

If an appeal of the Citation Hearing Recommendation is filed by either the petitioner or ID, it will be heard by the Appeals Division.

Step	Who	Action
1	ETD	<ul style="list-style-type: none"> <li>Receives the petition from petitioner.</li> <li>Forwards the hearing file along with the petition to Case Management.</li> </ul>
2	Board's Case Management Section	<ul style="list-style-type: none"> <li>Schedules a hearing and forwards the hearing schedule to ID. (The hearing will be conducted either by telephone or in person at a Board office nearest the petitioner if a face to face hearing was originally requested by the petitioner.)</li> <li>Transmits the hearing file to the Conference Holder/Appeals Attorney.</li> </ul>
3	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews documentation in preparation for the hearing.</li> <li>Files any additional documentation received from ETD or the petitioner.</li> <li>If needed, contacts the investigator and/or ETD for any additional information needed.</li> <li>Attends hearing and takes notes on any additional contentions brought forth by the petitioner and/or his or her representatives. (These notes will help in the preparation for the next level hearing if an appeal is filed.)</li> <li>Defends the citation violations as necessary.</li> </ul>
4	Appeals Attorney	<ul style="list-style-type: none"> <li>Prepares and mails the decision and recommendation to the petitioner.</li> <li>Sends copies of the decision and recommendation to ETD and ID.</li> </ul>

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

5	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews the Appeals Attorney's decision and recommendation.</li> <li><del>Requests a hearing before the Board Members if warranted.*</del> <u>Contacts Appeals if the decision and recommendation contains a significant factual error or requests reconsideration of the decision and recommendation within 30 days.</u></li> <li>Files the Appeals Attorney's decision in the ID file.</li> <li>If no appeal is filed, maintains the file folder for one year prior to sending it to the ID warehouse for storage.</li> </ul>
6	Evidence Custodian	<ul style="list-style-type: none"> <li>Maintains Citation File Folder until authorization is received from the ID Hearing Person for its destruction.</li> </ul>

### CIVIL CITATION HEARINGS

(cont.) **445.000**

If an appeal of the Appeals Attorney's Decision is filed by ~~either~~ the petitioner ~~or ID~~, it will be heard by the Board. To be heard by the Board, the Appeals Attorney must have upheld a fine of more than ~~or dismissed a \$2,500 or more~~ and/or revocation of the license of the petitioner.\*

Step	Who	Action
1	Board Proceedings Division	<ul style="list-style-type: none"> <li>Receives the petition from the petitioner or ID.</li> <li>Requests the hearing file from the Board's Case Management Section.</li> <li>Schedules the petition case on the Board calendar.</li> <li>Notifies petitioner and ID of hearing schedule.</li> </ul>
2	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews file in preparation for the hearing.</li> <li>Files any additional documentation received from Board Proceeding or the petitioner.</li> <li>If needed, contacts the investigator and/or Board Proceedings for any additional information needed.</li> <li>Attends the Board hearing.</li> <li>Defends the citation violations as warranted</li> </ul>
3	Board Proceeding	<ul style="list-style-type: none"> <li>Prepares and mails decision to petitioner and sends copies to ETD and ID.</li> </ul>
4	ID Hearing Person	<ul style="list-style-type: none"> <li>Reviews the Board's decision.</li> <li><del>Files a Request for Reconsideration of the Board's decision if warranted.*</del></li> <li>Files the Board's decision in the ID file.</li> <li>If no Superior Court appeals are filed, maintains the file folder for one year prior to sending it to the ID warehouse for storage.</li> </ul>
5	Evidence Custodian	<ul style="list-style-type: none"> <li>Maintains Citation File Folder until authorization is received from the ID Hearing Person for its destruction.</li> </ul>

\*ID's appeals rights are subject to change upon adoption of the Board's *Rules of Practice* currently under revision.

## EQUIVALENT AMOUNT OF TOBACCO PRODUCTS

Input

0.0435 Cigarette Tax Per Stick

10000 Quantity Of Cigarette Sticks Seized

46.76% Tobacco Products Tax Rate

\$500.00 Estimated Wholesale Cost of Tobacco Seized

Wholesale cost of tobacco necessary to meet the  
notification requirements of R&T Section 30437(b)(1) \$ 204.66

Legal Notice on website necessary? YES

### Formula Details:

Tobacco products are taxed on the wholesale cost, and cigarettes are taxed per stick. However, the tax rate on tobacco products is derived every fiscal year as a percentage by calculating the average cost per stick as it equates to the tax rate. Therefore, calculate the tax value of the 12200 sticks, less any seized, allowed for non-website notification under R&T Section 30437(b)(2). Once the tax value is determined on cigarettes, dividing the cigarette tax by the tobacco products rate will give an equivalent value of tobacco products as required under R&T Section 30437(b)(2).

EXAMPLE: The current cigarette tax rate is \$.0435 per stick and the tobacco products tax rate is 46.76% of the wholesale cost. The tax value of 12200 sticks, less 200 stick seized (carton), is \$522 [\$.0435 \* (12200 sticks - 200 sticks)]. Whether cigarettes or tobacco products are seized, if the tax value is less than \$530.70, posting a Legal Notice on the Board's website will not be required. In this example, the Legal Notice would not be required since the wholesale cost of the tobacco is less than \$1,116.34 (\$522 divided by 46.67%)



## LEGAL NOTICE

xx/xx/xx

**TO ALL INTERESTED PARTIES:** Any person having any right, title, or interest in the following property, may, within twenty (20) days from the date of publication of this notice, file a verified petition stating his or her interest in the property, and requesting the release or recovery on the grounds that the property was erroneously or illegally seized. The verified petition requesting release or recovery of the property must be filed with the Chief, Board Proceedings Division; State Board of Equalization; 450 N Street, MC:81; PO Box 942879; Sacramento, CA 94279.

The property consists of [name of product and quantity]. This property was seized pursuant to [cite all the sections that apply: Revenue and Taxation Code Section 30436, Business and Professions Code Section 22974.3, Business and Professions Code Section 22978.2, on [enter date of seizure], at [enter time of seizure in civilian time; be sure to show a.m. or p.m.] from [enter name from whom property was seized], dba: [enter business name] located at [enter street address, city, state, zip].

BOE-55 (S1F) (7-04)

## NOTICE TO APPEAR

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

No.00502

☒ MISDEMEANOR

NONTRAFFIC

DATE OF VIOLATION

10/04/05

TIME

10:00

☒ AM☐ PM

DAY OF WEEK

S M T W Th F S

COMPLAINT/CASE NO.

(530) 555-5555

NAME (first, middle, last)

John Jeff Doe

ADDRESS

25 Brown St. Redding

STATE

CA

ZIP CODE

96001

DRIVER LICENSE NO.

N123456

STATE

CA

BIRTHDATE

01/01/70

RACE/ETHNICITY

SEX

M

HAIR

Brown

EYES

Blue

HEIGHT

6'

WEIGHT

200lb

OTHER DES.

CODE AND SECTION

DESCRIPTION

B&P 22980.1(c) - Cigarettes purchased  
from unlicensed person. (1<sup>st</sup> offense)B&P 22974.3(a) - 1<sup>st</sup> seizure less than 20 packs  
of untaxed tobacco. Continued on BOE 56

EVIDENCE SEIZED

Yes - cigarettes

RECEIPT NO.

BOE 1317

☐ Booking Required

LOCATION OF VIOLATION(S)

15 Main St.

CITY/COUNTY OF OCCURRENCE

Redding/Shasta

COMMENTS

ABC Store LRA 91-999999

☐ Violation(s) not committed in my presence, declared on information and belief.  
I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Arresting or Issuing Officer

Jimm Smith

Date

10/04/05

SIGNATURE

Jimm Smith

BADGE NO.

100

AGENCY

BOE

NAME OF ARRESTING OFFICER (if different from Issuing Officer)

DATE

Without admitting guilt, I promise to appear at the time and place indicated below.

X Signature Refused to sign

WHEN: Date:

Time:

☐ AM☐ PM

WHAT TO DO: Follow the instructions on the reverse.

WHERE: ☐ Superior Court

Court/Department:

Street:

City:

Phone:

☐ To be notified

SEE REVERSE

☐ You may arrange with the clerk to appear at a night session of the court.

Judicial Council of California, Form T-120 Rev. 1 (1-04), Penal Code 853.9.



\* 0 0 5 0 2 \*

No.00502

COURT COPY

If applicable

Not used

Not used  
Sign hereJurisdiction  
specific - refer  
to the Court  
Tracking  
Database

BA and LR Q #

ily used when an  
tside agency comes  
the scene and  
ikes an arrest

# Sample

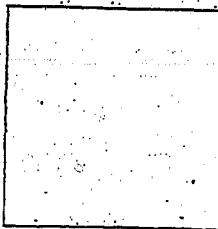
## Reverse Side of Court Copy

BOE-55 (S1S) (7-04)

Request a thumbprint only in those jurisdiction that require one, or if identification is questioned. (Example: No ID)

A thumbprint is only required on the back of the court copy. It is not required on the back of the BOE copy.

(Circle one)  
Right or Left  
Thumb Print



Thumb Print

COURT COPY

# Sample

## Reverse Side of Court Copy

DOE-55 (S-45) (7-04)

### IMPORTANT - READ CAREFULLY

**WARNING:** If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE, regardless of the disposition of the original charge.  
(Per Penal Code section 853.7)

**JUVENILES:** If you were under the age of 18 at the time the citation was issued, you must appear in court with your parent(s) or guardian(s).

**COURTESY NOTICE:** A courtesy notice MAY be mailed to the address shown on this citation indicating the required deposit of money (Bail) that may be forfeited instead of your appearing in court.  
If you do not receive a courtesy notice, appear in court on or before the time and date specified on the face of this citation.

VIOLATOR'S COPY

BOE-56 (S1F) (7-04)

CONTINUATION OF NOTICE  
TO APPEARSTATE OF CALIFORNIA  
BOARD OF EQUALIZATION☒ MISDEMEANOR  
NONTRAFFIC

No. 00502

DATE OF VIOLATION	TIME	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	DAY OF WEEK	COMPLAINT/CASE NO.
10/04/05	10:00		S M T W Th F S	

&gt; If applicable

NAME (first, middle, last)

John Jeff Doe

ADDRESS CITY STATE ZIP CODE

25 Brown St. Redding CA 96001

CODE AND SECTION DESCRIPTION

B&amp;P 22978.5(b) 1 yr. purchase

invoices on premise

refer to BOE-55

☐ Violation(s) not committed in my presence, declared on information and belief.

Not used

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and a continuation of the enforcement document noted.

ARRESTING OR CITING OFFICER

BADGE NO.

Jim Smith

100

SIGNATURE

DATE

Jim Smith

10-04-05

NAME OF ARRESTING OFFICER (if different from Citing Officer)

BADGE NO.

ly used when an  
side agency comes  
he scene and  
kes an arrest

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED.
<input checked="" type="checkbox"/> Signature John J. Doe

Judicial Council of California, Form T-106, Rev. 1-1-04, Penal Code 853.9

Serial No. 00251

COURT COPY

SEE REVERSE

# Sample

## Reverse Side of Court Copy

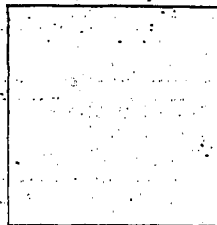
BOE-55 (S1B) (7-04)

Request a thumbprint only in those jurisdiction that require one, or if identification is questioned. (Example: No ID)

A thumbprint is only required on the back of the court copy. It is not required on the back of the BOE copy.

(circle one)

Right or Left  
Thumb Print



# Sample

## Reverse Side of Court Copy

BOE-55 (S45) (7-04)

### IMPORTANT - READ CAREFULLY

This form is used when multiple offenses are charged and the original notice to appear form does not provide sufficient space for the listing of all the charges. PLEASE REFER TO THE REVERSE OF THE ORIGINAL NOTICE TO APPEAR FOR IMPORTANT INFORMATION REGARDING YOUR LEGAL OBLIGATIONS.

BOE-98 REV. 1/11-05  
CIVIL CITATION

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

No. 04176

Fill in field -  
number is from  
the bottom of the  
BOE-99

DATE ISSUED	TIME	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	DAY OF WEEK	BOE-99 ATTACHED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
10/04/05	10:00		S M O W T h F S	Serial No.	00251

BUSINESS INFORMATION

CA SELLER'S PERMIT NO.	CIGARETTE/TOBACCO SELLER'S LICENSE NO.
SRJH100-999999	LRQ 91-999999
PRINT NAME (first, middle, last)	TITLE
John Jeff Doe	owner
DRIVER LICENSE NO./STATE	RESIDENCE TELEPHONE NO.
N123456 CA	(530) 555-5555
RESIDENTIAL OR BUSINESS ADDRESS (street, city, state, zip code)	
25 Brown St. Redding CA 96001	
MAILING ADDRESS (if different from above)	CITY STATE ZIP

BUSINESS NAME (DBA)	BUSINESS TELEPHONE NO.
ABC Store	(530) 111-1111

VIOLATION INFORMATION

CODE AND SECTION	DESCRIPTION
B:P22974.3(a)-1*	Seizure of less than 20 packs of untaxed tobacco
B:P22980.1(c)-	cigarettes purchased from unlicensed person (1* offense)
PROPERTY SEIZED	
Yes-cigarettes	BOE-1317 ISSUED
LOCATION OF VIOLATION(S) (street, city, zip)	COUNTY OF OCCURRENCE
15 Main St.	Redding/Shasta

You will receive a notice in the mail regarding this citation from the Board of Equalization that will provide information about any restrictions or fines, if applicable, and your appeal rights. Contact information will be provided in the notice should you have any questions.

Without admitting guilt, signature acknowledges receipt of this citation.

OWNER SIGNATURE (or authorized representative)	DATE
<i>J. Davis</i>	10.4.05
CITATION ISSUED BY (print)	TITLE
Jim Smith	Investigator
SIGNATURE OF ISSUER	DATE
<i>Jim Smith</i>	10.4.05

Type of Service ☐ Personal ☐ Substitute ☐ Mail ☐ Certified Mail ☐ Registered Mail

COMMENTS: Copy left at location with  
manager Joanna Davis

Original - Excise Taxes and Fees Division  
Pink - Investigations Division Yellow - Business Owner



BOE-99 (8-04)

## CIVIL CITATION CONTINUATION

STATE OF CALIFORNIA

## BOARD OF EQUALIZATION

No. 00516 ←

Fill in field - number  
will always be the  
same number as pre-  
printed on the BOE-98

DATE ISSUED 10 / 04 / 05	TIME 10:00	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	DAY OF WEEK S M <u>T</u> W Th F S
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NAME (first, middle, last)

John Jeff Doe

ADDRESS 25 Brown St.	CITY Redding	STATE CA	ZIP CODE 96001
-------------------------	-----------------	-------------	-------------------

CODE AND SECTION

DESCRIPTION

B &amp; P 22978.5(b) - 1 yr. purchase

invoices on premise

See BOE-98

Without admitting guilt, signature acknowledges receipt of this citation.

OWNER SIGNATURE (or authorized representative)

DATE

J. Davis

10-04-05

CITATION ISSUED BY (print)

TITLE

Jim Smith

Investigator

SIGNATURE

DATE

Jim Smith

10-04-05

Type of Service

☒ Personal☐ Substitute☐ Mail☐ Certified Mail☐ Registered Mail

COMMENTS:

copy left at location with  
manager Joanna Davis

Number filled in  
on the BOE-98

Serial No.

00251

Original - Excise Taxes and Fees Division  
Pink - Investigations Division Yellow - Business Owner

R.L. LOSEL BUSINESS FORMS (530) 677-2158

# **Investigations Division Policy and Procedures Manual**

## **Chapter Five**

### **Case Management**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### COMPLAINT INTAKE PROCESSING

(cont.) 505.005

Any complaint that is referred to the ID by a district, program area, or any other source will require an acknowledgement letter from the Division Principal Auditor. The acknowledgement letter will be sent to the District Administrator or other Division Chief with a copy to the Chief of the ID and to the ID Area Administrator. The ID will accept or reject the complaint within 60 days of the date of the acknowledgement letter. The Administrative Assistant for the Chief will send a 30-day follow-up from the date of the acknowledgement letter to the ID area administrator with a copy to the Chief.

If ID staff receives a complaint by means of a phone call, e-mail, letter, or other source, ID staff will complete an ID-600 and print the following IRIS screens: TAR AI-Registration, TAR-Sub Locations, TAR-Partners, TAR-Officers, CTS CM-Individual Entity, AUD MC-Audit, and TPS TP-Appeals. The entire complaint package will be submitted to the HQ in-take person.

The following chart lists the steps and person responsible for each step in processing a complaint:

Step	Who	Action
1	In-take Staff or designee	<ul style="list-style-type: none"> <li>Perform initial basic screening on IRIS and ID database for account numbers and other agency information, if necessary.</li> <li>Type complaint on the complaint form, if necessary.</li> <li>Assign complaint number if no active complaint on this subject exists on the ID database.</li> <li>Input complaint into the ID database. Input information must include: subject name, d.b.a. name, and d.b.a. address only.</li> <li>Send acknowledgement letter if complaint or referral comes from a district, program area, or other agency.</li> <li>Send the original complaint to the ID Area Administrator within ten days of receiving the complaint.</li> <li>Complaint is received from taxpayer or outside source; complaint does not meet felony thresholds: open complaint, input subject name, d.b.a. name, d.b.a. address, close complaint and refer to a district office, program area, or another California or Federal agency.</li> <li>If the ID <u>receives</u> a complaint on a previously closed complaint, ID will contact the appropriate district office or program area to ascertain action taken and to advise suspense of all future action.</li> </ul>
2	Area Administrator	<p>If this is a complaint that the ID will take over, the following procedure must be followed:</p> <ul style="list-style-type: none"> <li>Review the complaint for immediate closure or assignment to a crew supervisor.</li> <li>Send the complaint to the area administrator's secretary for handling as per area administrator's recommendation.</li> <li>Send a rejection or acceptance letter to the district office or program area within 60-days of the acknowledgement on all complaints that had an acknowledgement letter with copy to Chief.</li> </ul>
3	Area Administrator's Secretary	<ul style="list-style-type: none"> <li>Review area administrator's recommendation.</li> <li>Create a manila folder for the complaint.</li> </ul> <p>If closure recommended:</p> <ul style="list-style-type: none"> <li>Close complaint on database.</li> <li>If needed, prepare referral letter for Area Administrator's</li> </ul>

## CASE MANAGEMENT

		signature to district or program area with copy to Chief. <ul style="list-style-type: none"> <li>File original complaint in the ID office file.</li> </ul> If assigned: <ul style="list-style-type: none"> <li>Assign complaint on the ID database to appropriate team.</li> <li>Place copy of complaint in ID office file.</li> <li>Forward complaint to crew supervisor.</li> </ul>
4	Chief's <u>Administrative Assistant</u>	Send 30-day follow up on acknowledgement letter that was previously sent to a district office or program area. 30-day follow up will be sent to appropriate area administrator with a copy to the Chief.
5	Crew Supervisors	Review the complaint for assignment to an investigator.
6	Crew Supervisor's Secretary	<ul style="list-style-type: none"> <li>Assign complaint to investigator on the ID Database as per crew supervisor's recommendation.</li> <li>Create 30-day follow ups for referrals that have an acknowledgement letter attached.</li> <li>Forward complaint to investigator.</li> </ul>

If a complaint normally would meet investigation criteria for assignment, but is rejected by the supervisor due to workload commitments, a copy of the complaint will be maintained in a separate supervisor file. When investigators are working in an area, these complaints will be worked on a "time allowed basis." If these complaints have been referred to a district or program area and staff has time to investigate any of these complaints, district or program area will be advised.

### PROCEDURE FOR HANDLING A COMPLAINT FROM A BOARD MEMBER 510.000

Upon receipt of a complaint from a Board Member, the ID will assign a complaint number and the in-take staff will evaluate the complaint to see if it meets the guidelines for the ID to initiate an investigation. If the complaint meets the requirements for further investigation, the complaint number will be forwarded to the appropriate Area Administrator, the complaint will be assigned to the appropriate crew, and the Chief will be copied. The Chief will send an acknowledgement letter to the Board Member stating that the complaint was received, evaluated, and that a memorandum will be sent within 60 days stating the course of action to be taken with an explanation as to why that decision was made.

If the evaluation discloses that the complaint is outside of the Board's program areas, the complaint will be referred to the proper state agency. In that case, ID will send a memorandum to the Board Member stating that the complaint has been referred. A copy of the referral letter will be attached to the Board Member's correspondence. If the complaint is elevated to case status, a case number will be assigned and the initial complaint will be closed out. A full investigation will be made and if applicable, a criminal prosecution and/or civil billing will be made. When the fraud investigation (and prosecution if warranted) is completed, the Chief will inform the Board Member of the results of the case.

### HANDLING COMPLAINT AND CASE REFERRALS

**515.000**

#### COMPLAINT REFERRALS

**515.005**

When complaints are received by the ID that do not contain enough information to provide significant evidence of criminal tax evasion or the information does not meet the ID's criminal tax evasion criteria, the complaint will be forwarded to the appropriate program area or a district office for further investigation. Form BOE-603, *Investigations Division Referral (Complaint)* (Intranet), will be submitted to the direct supervisor for review. Thereafter, the form will be forwarded to the AA for signature with copies to the Chief of Field Operations, the Chief of Collections and Third District operations Division, or appropriate Deputy Director. The form will cover all three areas:

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### COMPLAINT REFERRALS

(cont.) 515.005

1. Source of Assignment - a description of the complaint and the source of the complaint.
2. Results/Findings - a description of the investigation results, including important details.
3. Reason for Closure – “The information in the complaint does not meet the criteria for the ID to pursue a criminal tax evasion investigation at this time. Therefore, we are forwarding this complaint to you for your consideration and any action you deem necessary. If, in the course of your follow-up, you uncover significant evidence of criminal tax evasion, please refer this complaint back to ID for further investigation.”

Attachments should include leads, working papers, and any other relevant information that may assist the program area or a district office. These attachments should be tabbed or marked to identify the information provided.

Investigators should not refer any information to a district office or program area which would be considered confidential to the ID (e.g. Grand jury information, case notes discussing another case, etc.).

### CASE REFERRALS

515.010

Cases investigated by the ID that do not warrant prosecution for criminal tax evasion should be referred to the appropriate program area or district office for completion of the audit and/or billing with applicable penalties.

Form BOE-604, *Investigations Division Referral (Case)* ([Intranet](#)), contains the same information as described above, except that the following language is substituted for No. 3.

*Reason for Closure – (1) “It has been determined the information in this case does not meet the criteria for prosecution for criminal tax evasion. If, in the course of your review, you uncover additional significant information which warrants prosecution for criminal tax evasion, please refer the case back to ID for further investigation.” or (2) “We are unable to pursue this case at the present time and recommend you proceed civilly.”*

See the Compliance Policy and Management Guidelines section 165.00 for criminal fraud prosecution.

BOE-604, will be submitted to the direct supervisor for review. Thereafter, the form will be forwarded through the Area Administrator to the ID Chief for signature with copies to the Chief of Field Operations, Chief of Collections and Third District Operations Division, appropriate Deputy Director, and the appropriate Area Administrator.

Attachments should include leads, working papers, and any other relevant information that may assist the program area or district office. These attachments should be tabbed or marked to identify the information provided. In addition, staff will complete ID-605, *Case Close-Out Authorization* ([Intranet](#)), indicating the case is closed out and has been referred to a program area or district office.

Investigators should not refer any information to a district office or program area which would be considered confidential to the ID (e.g. Grand jury information, case notes discussing another case, etc.).

### COMPLAINT AND CASE FILE HANDLING PROCEDURES

520.000

A paper file will be created for each complaint and/or case that is input to the ID database.

### COMPLAINT FILES

520.005

The procedures for handling complaints and creating files are as follows:

- In-take person or designee will enter the complaint on the database and put the complaint number on the complaint hardcopy. Additional printouts or material will then be attached.
- The support staff will make a copy of the initial complaint hardcopy, attach materials, and create the file. The file will be a legal sized manila folder with the complaint number on the tab section. The complaint files will be filed in the designated area in sequential order by complaint number. Sign-out cards will be utilized if files are removed from the file area even for a brief period. Sign out cards will include date signed out, by whom, and complaint number.
- Original complaint and attached materials will be sent to the appropriate area administrator for review and assignment to the appropriate investigation crew supervisor.
- The crew supervisor will be responsible for assigning the complaint.
- The assigned crew will be responsible for maintaining the master complaint file, i.e., making copies of documents, adding pertinent materials, etc. A copy of correspondence that is generated during the

## CASE MANAGEMENT

### COMPLAINT FILES

(cont.) 520.005

complaint investigation phase will be filed in the complaint file. Northern and Southern California offices will maintain their own master files for complaints.

- Once the complaint has been closed and approved by the area administrator, the closing report and all documentation will be returned to the crew supervisor for filing in the complaint file. *The crew supervisor will verify that the appropriate comments have been added to ITS.*
- ~~I understand we are supposed to put notes on the complaint file, but that doesn't always seem to be followed. Can we have some management check to make sure this is being done?~~

The procedures for creating files are as follows:

- ~~The area administrator's secretary will flag the account, create an Administrative Case File for the opening and progress reports when a complaint is elevated to a case and the complaint is closed out. The file will be a legal size manila folder with the case number on the tab section. The case files will be filed in the designated area in sequential order by case number. Sign out cards will be utilized if files are removed from the file area even for a brief period. Sign out cards will include date signed out, by whom, and case number. Cases are created by converting a complaint into a case. The case number is automatically assigned by ITS upon the complaint conversion. See IDPPM section 114.000 for guideline on flagging accounts.~~
- All material pertinent to the case will be filed in the *Tax Evasion Investigation Report* (TEIR) case file. The material from the complaint file may be copied for the case file but may not be transferred (Exhibit 1).
- The case investigator will be responsible for maintaining the TEIR case file, i.e., making copies of documents, adding pertinent materials, inputting his/her own opening and progress reports into ITS (data input/update forms available on the ID Intranet), etc. All documentation that is generated during the case investigation phase will be filed in the TEIR case file.
- When not in use, TEIR case files must be placed back in the file area. These files will be stored in the file depository area when the investigator is out of the office for more than five days and will be available, upon completion of an out card, to any ID staff member who may have a need to follow-up on the case.
- Once the case has been closed and approved by the Chief, the closing report and all documentation will be returned to the crew supervisor for filing in the TEIR file.

### DATABASE FOR THE DIVISION

525.000

The ID database (Image A) is a database used to log in complaints, cases, and referrals, and serves as a depository for all case information. The database allows an investigator to review information that has been collected and recorded on past and present criminal tax evasion investigations. The purpose of the database is to allow investigators to: link similarities in investigations, link cases, and to produce division statistics. A function of the database is to track historical case detail in order to aid investigators in linking suspects who may have been, or are currently involved in more than one criminal enterprise. Standard database reports include the following:

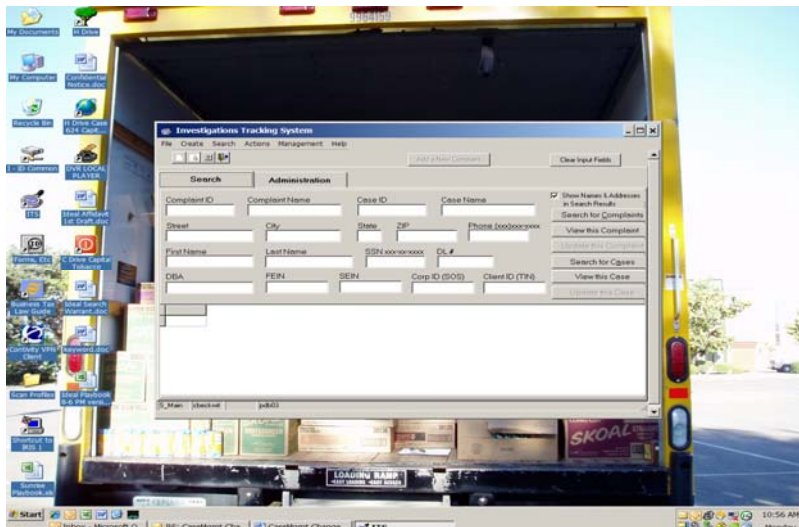


IMAGE A

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### DATABASE FOR THE DIVISION

(cont.) 525.000

- complaint details and total number of complaints;
- case details and total number of cases;
- hours charged to a complaint/case by month and fiscal year;
- audit information, including audit hours and billings;
- a number of categories for suspect linking including suspect names, AKAs, vehicles, associates, and addresses;
- search warrant and seizure details and disposition of cases (civil or criminal penalties); and,
- allocation of costs to tax programs.

### COMPLAINT/CASE AND REPORT LOGGING SYSTEM

530.000

The ID database is maintained numerically by year to allow accountability for open, closed, and pending investigations. The ID's database will include both complaint and case status information, as well as referral follow-ups, which may be accessed for ad hoc or executive reports. The ID database was designed to properly document complaints and record them for future reference.

The complaints are entered in the ID database by a number starting with the year, followed by the month and day the complaint was received, and lastly, a number assigned in sequential order. As an example: 9401020003 would represent: 94/the year, 01/January, 02/the second day of January, and 03/the third complaint recorded. The complaint number will be recorded in the database and on the face of the complaint in the upper right hand corner.

Information documented on form ID-600 should answer the questions - who, what, where, when, why, and how, and should include any additional information concerning the person suspected of criminal activity, such as the person's vehicle, address, and method of operation.

Once form ID-600 is completed, it must be submitted to the supervisor for review. The supervisor will determine what action, if any, will be taken. If the supervisor determines, with approval from the appropriate area administrator, that a full investigation should be opened, the investigator will complete form ID-601 to convert the complaint to a case. The database will be updated indicating the complaint has been closed and converted to a case. The case number will then be entered into the database and on the face sheet of the case file. Case numbers are assigned sequentially in the order that the cases are opened.

The investigator assigned the case will then open and maintain a TEIR case file. The status of a case is: Open, Closed, or Pending, as defined below:

- Open:* The case is actively being investigated and final action has not been taken by the investigator.
- Closed:* The case has been concluded either through a complaint filed with the DA, a civil remedy, court adjudicated, or other action filed, audit, etc.
- Pending:* The case cannot proceed further until additional information is received or additional action is taken, at which time the case may be reopened. A pending case can be closed if it appears, given the information available, that the case will not be reopened in a timely manner.

### CASE FILE MANAGEMENT

535.000

All of the information collected on the case is maintained in the standardized TEIR file. This file will be stored in the file depository area when the investigator is out of the office for more than five days and will be available, upon completion of an out card, to any ID staff member who may have a need to follow-up on the case. Supervisor reviews of TEIR case files are conducted quarterly. By the end of the month following the close of the quarter, the ID-611, TEIR Case File Approval (available on the ID Intranet) will be completed and placed in the case file.

TEIR information is organized under the following six headings: I. Case Summary Reports; II. Verification; III. Warrant; IV. Prosecution; V. Miscellaneous; and, VI. Surveillance Notes. Below is a brief description of each section.

#### I. CASE SUMMARY REPORTS

535.005

This section of the file should contain an ID-601 (if applicable), ~~(Exhibit 7)~~, an original ID-600 and an ID-101, *Executive Data Sheet*. The Executive Summary should include an introduction, investigative overview, seizure overview, warrant overview, interview report overview, audit overview, case outcome, and staff recommendation for or against prosecution, see sample at the end of the section. Attached to the Executive Summary will be the ID-101, *Executive Data Sheet*. The executive summary should be a concise overview and provide a person unfamiliar with the case an understanding of the investigation and the outcome.

## CASE MANAGEMENT

### II. VERIFICATION

**535.010**

This section contains all verification documents collected by the investigator to establish the identity of a person or persons suspected of criminal tax evasion. This includes detailed verification (EDD, DMV, FARES, etc.) documents related to each suspect. Depending on case complexity, the documentation may be filed alphabetically by suspect name.

### III. WARRANT

**535.015**

Documents included in this file section should all relate to the search warrant and are arranged to follow the chronology of events. For example: Affidavit(s), Search Warrant(s), Briefing Package(s), Return of Warrant(s), and Inventory sheets.

### IV. PROSECUTION

**535.020**

This file section should include the prosecution package, correspondence with BOE Legal, correspondence with District Attorneys/DA contact sheets and subpoenas, minute orders, transcripts, sentencing documents, etc.

### V. MISCELLANEOUS

**535.025**

The miscellaneous file section is a catch-all section for all of the documents collected during the course of an investigation that do not fit within one of the other standardized case file sections, i.e. investigative notes.

### VI. SURVEILLANCE NOTES

**535.030**

This file section should include law enforcement surveillance reports, surveillance briefing packages, etc. All surveillance notes and reports should be filed in date order, with the most recent report on top.

## TAX EVASION CASES

**540.000**

The following are suggested steps that should be followed in each case. This summary is not all-inclusive. It is the investigator's responsibility to use these and other steps to successfully complete an assigned case.

1. Conduct regular BOE computer reviews (IRIS).
2. Coordinate investigations with appropriate authorities.
3. Locate and interview witness(es).
4. Investigate crimes: surveillance (within Board guidelines), search warrants, undercover buys, etc.
5. Assist with the execution of search warrants and collect evidence as needed.
6. Identify criminal violations and document elements of each offense.
7. Prepare criminal complaint.
8. Present the case to the appropriate district attorney or local prosecutor to determine if additional information or documentation is required to file a criminal complaint.

*Note: All contacts with the Board's Legal Department should be made by a supervisor or his or her designee.*

## INVESTIGATION CASE REPORTS

**545.000**

Investigators will be responsible for preparing two types of case reports on all assigned cases: an opening report and a 60-day progress report(s). All reports should be in chronological order and answer the basic questions of who, what, where, when, why, and how. The reports should be written in third person and include only relevant information written in narrative form. All relevant information must be supported by documentation such as invoices, schedules, interview reports, surveillance reports, etc. and filed in the TEIR file.

### OPENING CASE REPORT (ID-607)

**545.005**

After a case is assigned to an investigator, the investigator will complete the opening report within 30 days of the assignment. In order to track opening report due dates, the opening case report for cases assigned between the 1<sup>st</sup> – 15<sup>th</sup> of the month are due at the end of the month the case was assigned. Cases assigned between the 16<sup>th</sup> – 31<sup>st</sup> of the month would have the opening report due at the end of the month following the month of assignment. For example, case assigned 9/5/00 – opening report due 9/30/00; case assigned 9/20/00 – opening report due 10/31/00. The opening report will:

- provide a brief synopsis of the suspected crime;
- summarize activity during the first 30 days of the investigation;
- identify all known suspects and suspect information;
- include brief narrative on background information with foundation and sources;



## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### OPENING CASE REPORT (ID-607)

(cont.) **545.005**

- investigators will include a completed form ID-606-E, *Entity Background* (Exhibit 2) or ID-606-C, *Background Information* (Exhibit 3), and attach to the opening case report for review and signature of the supervisor. This information will be entered into the database by the office tech; and,
- include a proposed investigation plan of action.

This report will be submitted to the supervisor for review. The report will then be filed in the ACF.

### 60 DAY PROGRESS REPORTS (ID-608)

**560.010**

~~Subsequent to the opening report, a progress report will be required every 60 days. The progress reports will:~~

- ~~• include a brief synopsis of case;~~
- ~~• summarize activity for the previous 60 day period;~~
- ~~• identify any new suspects and/or background information not included in the opening report;~~
- ~~• If new suspects are identified, investigators will complete an ID-606-E or ID-606-C, and attach to the progress case report for review and signature of the supervisor. This information will be entered into the database by the office tech; and,~~
- ~~• indicate any changes made to the investigation plan of action based on new information. Future actions could include surveillance, subpoenas, search warrants, prosecution packages, retail inspections, interviewing potential witnesses, etc. Activities identified in this section of the report are not intended to be all-inclusive, nor are they intended to limit specific investigative activity to those identified on the report.~~

~~These reports should not only summarize what has been done, but also explain what will be done in the next 60 days. The first and second 60-day report (90 and 150 days, respectively, from assignment date) will be reviewed by the supervisor and then filed. The third 60-day report (over 150 days from assignment date) and all subsequent 60-~~

### 60 DAY PROGRESS REPORTS (ID-608)

(cont.) **560.010**

~~day reports will be submitted to the supervisor and then to the appropriate area administrator for review and then filed.~~

~~Each area administrator will forward a monthly report to the Chief for all cases over 240 days old. This report will include the district, case number, tax program, open date, DBA, search warrant date, brief description of the status of the case, monthly hours, days old, total hours, and phase of the case. If further information is needed, the Chief will request the information on a case by case basis.~~

### ENTERING INFORMATION ON THE ITS DATABASE

**550.000**

All opening, closing, and monthly case activity reports will be completed in the ITS database.

### OPENING REPORTS

**550.005**

Before comments can be made in ITS, a case number must be obtained from either Ms. Marcia Kountz in Northern California or Ms. Kathy Thomas in Southern California by using either an ID-606-E or an ID-606-C.

### STEPS

- Access the ITS database to enter the opening report comments.
- Enter the case number to search for the case in ITS. The case information will appear at the bottom of the screen.
- Double click on the appropriate case and the case information will appear.
- Click on the tab towards the top of the page that states "comments." To add comments press the "add comments" tab. The header "Opening Report" should be the first line entered. Skip a line before writing comments. The substance of the opening report in ITS should be similar to the opening report currently being prepared.
- To view previous comments, press the "view comments" tab.

**Note:** *Use caution when saving comments.* When the "save" tab is clicked, all comments will be permanently saved. No changes can be made to those comments. The comments in these reports are available to defendants in the discovery process. Therefore, only important, appropriate, and relevant comments should be recorded. Writing

## CASE MANAGEMENT

### OPENING REPORTS

(cont.) 550.005

the comments in Microsoft Word and then using spell check as well as cut and paste is the best way to input comments. The spell-check option is not available through ITS.

### MONTHLY ACTIVITY REPORT

550.010

The Monthly Activity Report detail should be entered **each month** in ITS, for each separate case, in conformity with Chapter 6 of the ID Manual. The procedure for entering the monthly activity report comments in ITS is the same as that for the opening report. As an example, the heading for the first monthly activity report should be “30 Day Report #1 – December ‘05.” The actual report number used should correspond with the report number of the case information that is being entered. Each month the report number and month will change.

A recap of activity reported on previous reports is not necessary. Only the current monthly activity, the activity to take place in the immediate future, and updates of facts from the opening report should be included in the monthly activity report. Comments should be brief but sufficiently cover all activity.

### CLOSING REPORTS

550.015

Close-out information should be entered in ITS under the heading “Closing Report.” The comments should be brief but give a general overview of the case. The purpose of the closing report comments in ITS is to be able to quickly access the case information without having to refer to the executive summary. All forms required by Section 670 of the ID manual, when closing out a case, are still required.

## CASE CLOSURE PROCEDURE

555.000

A case must be closed when one of the following occurs:

- Lack of evidence
- Rejection by prosecuting agency
- Completion

The case is completed when the related civil billing has been issued and the defendant(s) has not filed any appeal within the allowable period under the statutes after court sentencing. Once the case is considered completed, the investigator will notify the ID Civil Audit Group of the pending closure of the case. Within 30 days upon notification, the Civil Audit Group is to complete a final review and photocopy of any records seized during search warrant, if any. After the 30-days period, the investigator will obtain a court order to return any records/items seized during search warrant. The court order should contain language that allow the BOE to destroy the seized items/records upon agreement by the defendant(s) and/or parties involved. The investigator will facilitate the return of the seized records/items to the defendant(s) and/or parties involved as soon as possible after the court order has been obtained.

The investigator will submit in a white binder the case file, the TEIR, an ID-014-A, *Approval and Tracking Form A* ([Intranet](#)), an ID-605 and the Executive Summary with Executive Data Sheet to the supervisor who will review, approve, and forward the case to the area administrator. The investigator shall also submit a “Disposition of Assignment” memorandum (~~Exhibit 14~~) if the case was the result of a referral and a billing is generated and/or convictions were obtained for cigarette and/or tobacco violations. The disposition memorandum should address as follows: to the district administrator of the district of the account for all sales tax cases; to the Chief of the Excise Taxes and Fees Division for all cigarette and tobacco cases; and to the Chief of the Fuel Taxes Division for all fuel tax cases. The memorandum must include a brief summary of the outcome of the case investigation and must be signed by the Chief of the Investigations Division. If convictions are obtained for cigarette and tobacco violations (§§ 30747.1 and 30480), the memorandum must include a comment regarding the need for any active AB 71 license to be revoked or held due to a felony conviction. (BPC §§ 22973.1 (a)(B)(3) and 22977.2 (a)(B)(3).).

After approving the case close-out file, the area administrator will send the case along with the applicable closure documents (on diskette) to the Chief, who will forward the case to the division reviewer. When the division reviewer has completed the review process, and approved the case for closure, he/she will update the applicable closure documents. The reviewer will return the case file to the Chief for final closure, approval and signature, and then the file will be returned for final processing to the appropriate area administrator according to region.

If the Chief disagrees with the area administrator’s closure recommendation, the case file will be returned to him/her for rework or corrections in accordance with the Chief’s recommendations. All cases returned for correction shall be given a high priority. The case will be resubmitted for review and approval to the Chief or designee.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### CASE CLOSURE PROCEDURE

(cont.) **555.000**

When appropriate, case closure notification will be sent to the appropriate district(s), program area(s), or others by the Chief's secretary. The Chief's secretary will maintain a log which tracks when cases are received and the disposition.

### NORTHERN REGION

**555.005**

The area administrator will return the case file to the appropriate crew supervisor who will oversee closure on the database and ensure that the necessary documentation is included in the case binders. The case binders will then be filed. The area administrator should maintain a log of when cases are received, when they are forwarded to the Chief or others, and when they are returned.

### SOUTHERN REGION

**555.010**

The area administrator will oversee the closure on the database and ensure that the necessary documentation is included in the case binders. The case binders will then be filed. The area administrator should maintain a log of when cases are received, when they are forwarded to the Chief or others, and when they are returned.

### CLOSED CASES WITH CIVIL BILLINGS

**555.015**

Civil audits must go through the same approval procedures as an ID case. The ID case cannot be closed until the civil audit has been completed, reviewed, and approved by the Chief. Once the review and approval process is complete, the civil audit will be forwarded to the ID headquarters audit control for handling.

### CASE PROCESSING PROCEDURES

**560.000**

Detailed guidelines cannot be provided for the preparation of cases, civil audits, and prosecution packages because each case is different. The investigator must use his or her investigative and audit skills in determining how each case should be completed. Any questions should be discussed with the investigator's supervisor. During the completion of each case, the following should be kept in mind:

- The work done in the completion of a criminal audit and a civil audit will range from the same work to very different work.
- The civil audit will ~~always~~ be prepared ~~first~~ and completed by an auditor.
- The criminal audit, if necessary, will be completed by an investigator.
- The documentation to support the amount of the criminal tax evaded must be properly completed, adhere to generally accepted auditing principals, be well organized, describe the method used to establish the amount of tax evaded, and stand alone for a third party review. This includes, but is not limited to, proper schedule preparation and comments, both on lead schedules and subsidiary schedules.

The processing of cases will be as follows:

- after the search warrant, the investigator is to prepare a referral to ID Audit.
- It is recommended the criminal investigator and the civil auditor work closely together to determine what information has been obtained and prepare an inventory of evidence seized. However, the investigator is not to delay the review of evidence seized due to statute of limitation on criminal prosecution.
- The investigator is to write any necessary supplemental search warrant.
- the investigator will prepare the criminal audit, if necessary, and the investigator will also complete the prosecution package.
- The prosecution package and the criminal audit will then be turned in for review.
- upon completion of the civil audit, the audit will be turned in for review to the appropriate supervisor and processed through the review system.

When the prosecution package is approved, arrangements should be made to obtain prosecution.

### NOTES

**565.000**

All investigators will be responsible for maintaining chronological notes. There is no set form for these notes, but it should be remembered that the notes may be subject to disclosure and review in a criminal proceeding. Inappropriate statements and information should never be included in the notes. Notes include all written, typed, or sketched information maintained by the investigator, in any form. These notes must be legible and included in the case file. Once a note is written it can never be altered, but may be amended in writing by a subsequent note if information is obtained that makes prior notes erroneous.

**Account**  
# \_\_\_\_\_

**Account**  
# \_\_\_\_\_

**Account**  
# \_\_\_\_\_



# INVESTIGATIONS REPORT

\_\_\_\_\_  
**Investigator**

\_\_\_\_\_  
**Case Number**

\_\_\_\_\_  
**Case Name**

\_\_\_\_\_  
**Date Opened**

\_\_\_\_\_

\_\_\_\_\_  
**Date Closed**

## **I. SUMMARY REPORTS**

### **A. CLOSE-OUT**

### **B. EXECUTIVE SUMMARY**

- The Executive Summary shall include, but not limited to:
  1. **Introduction** (What led to the investigation, i.e., anonymous tip, lead, referral, retail checks, complaint and case number, etc.)
  2. **Investigative Overview** (Synopsis of the investigation, including participating agencies, extent of illegal activity, parties to the crime, etc.)
  3. **Warrant Overview** (Date(s) warrants served, recipient(s), location(s) of the warrants, when warrant was filed and by whom.)
  4. **Seizure Overview** (items seized during the execution of the warrant and detail of any evidence held by another agency.)
  5. **Outcome/Close** (Prosecution, billings, who was billed, etc.)

### **C. ORIGINAL COMPLAINT**

## II. VERIFICATION DOCUMENTS/LICENSES

### Individual Suspect Detail

All of the Verification documents and licenses identified below shall be organized in alphabetical and numeric order. For example, a suspect with the last name of Alpha would appear before Beta. Affixed to Alpha DMV (Drivers License Status/History), customs Database Information, EDD Information, Experian (Property Ownership Verification), Franchise Tax Board Information, Internal Revenue - Tax Returns, Secretary of State Information, STARS Information (BOE Records), etc.

Requestor	Date of Request	Date Received	• Information
			• DMV (Drivers License Status/History)
			• Customs Database Information
			• EDD Information
			• Experian (Property Ownership Verification)
			• Franchise Tax Board Information*
			• Internal Revenue - Tax Returns
			• Secretary of State Information
			• STARS Information (BOE Records)
			• OTHER_____

\* For retention of FTB returns in excess of 30 days, refer to IDPPM § XXX.XXX.

### **III. WARRANT/SEIZURE INFORMATION**

- Approval Procedure Documents (Chief, BOE Legal, Local DA if applicable)
- Affidavit Testimonial(s)
- Search Warrant(s) Organized in chronological order by date served
- Consent Search Documents
- Briefing Package, i.e., Maps, Suspect, Participating Law Enforcement Personnel, Threat Analysis, Staging, etc.
- Seizure Notice(s) Organized in chronological order and affixed to the applicable Search Warrant(s)
- Suspect Interview/Statement Forms
- Arrest Warrant(s)
- Return of Warrant and Inventory Sheet(s)
- Court order for release of evidence and/or records
- Evidence Custodian Correspondence

## **IV. PROSECUTION**

### **A. CRIMINAL PROSECUTION**

- Prosecution Package (title page, table of contents, suspect details, summary of statutes, brief summary of case, short description of applicable laws, if necessary, detailed narrative, text of relevant statutes, witness list (potential too), list of exhibits, and exhibits. Copy of the criminal audit must be an exhibit)
- Correspondence with BOE legal
- Correspondence with District Attorneys/DA contact sheets
- Subpoenas, minute orders, transcripts, etc.

### **B. CIVIL TAX AUDIT**

- Field Billing Orders, Jeopardy Determinations, copy of Audit and Audit workpapers, etc.



## **V. MISCELLANEOUS/CIVIL TAX LIABILITY**

### **GENERAL INVESTIGATION DOCUMENTS AND PROCESSING INFORMATION**

#### **A. CASE REPORTS (other than Summary)**

- Activity Reports, Itineraries, Case Hour Summary, Investigative Notes

#### **B. Organizational Detail**

- Organizational Chart Depicting the Tax Evasion Enterprise
- Storage Facility Photographs and/or Physical Location Descriptions
- Corporate Held Business Photographs and/or Physical Location Descriptions

#### **C. Civil Audit**

## **VI. SURVEILLANCE NOTES**

**Surveillance Notes, Law Enforcement Surveillance Reports, Surveillance Briefing Packages, etc.  
All surveillance notes and reports must be filed in date order (most recent report on the top).**

## **Investigation Documentation Procedures**

Upon receipt of the complaint, the following two-part process should be followed:

Part 1: When an initial complaint has been received, the following activities should occur:

- a) Determine which section of the law has been violated.
- b) Prepare Complaint Form and/or Investigation Report Sheet, and submit to the ID supervisor who will determine if the complaint warrants moving to Part 2: investigating the complaint. Once the Complaint Form and Investigation Report Sheet has been completed, they need to be submitted, by the supervisor, to the appropriate person for entry to the Investigations Division database.
- c) Check NAS and Compliance Unit to determine if suspect(s) have a cigarette distributor license and/or application on file. Print-out designating license or lack thereof should be maintained in Section II, Verification Documents/ Licenses.

Part 2: When the determination has been made to pursue a specific investigation, the following requests for information are made:

- a) A request to the Department of Motor Vehicles (DMV) 1) for a copy of the suspect(s) California Driver License (CDL), Picture and Driving Record; 2) a vehicle check, i.e., a print-out of all vehicles registered to the suspect(s) and 3,) a print-out of all persons with a CDL/Identification Card (ID) at the suspect(s) address.
- b) A request to the Employment Development Department (EDD) for a copy of suspect(s) employer record, i.e., employer, wages, etc.
- c) A request to the Franchise Tax Board for a report of the suspect(s) income tax returns.
- d) A request for a Experian report which details the legal owner of the property, mortgages and/or liens on the property and the type of dwelling.
- e) Other inquiries may be requested as needed, including but not limited to the Secretary of State, the Alcoholic Beverage Control (ABC), etc.
- f) As the investigation progresses, it is the responsibility of each ID staff member assigned to the case to ensure that all information collected on a suspect(s) is maintained in the case file. This information is critical to facilitating a successful conclusion to the case.

## BACKGROUND INFORMATION - ENTITY

STATE OF CALIFORNIA  
INVESTIGATIONS DIVISIONCase Name: \_\_\_\_\_  
Case Number: \_\_\_\_\_Date: \_\_\_\_\_  
Investigator: \_\_\_\_\_Board Permits: \_\_\_\_\_  
Board Permits: \_\_\_\_\_☐ INDIVIDUAL

DBA: \_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Alias Name: \_\_\_\_\_  
Home Address: If any: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Home Phone #: \_\_\_\_\_  
Home Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Drivers License #: \_\_\_\_\_  
Drivers License-State: \_\_\_\_\_  
Social Security #: \_\_\_\_\_  
Sex: \_\_\_\_\_  
Title: \_\_\_\_\_  
Flight Risk-SW: \_\_\_\_\_  
Memo: \_\_\_\_\_  
Relationship to Case: \_\_\_\_\_  
TIN Number: \_\_\_\_\_DBA Name: \_\_\_\_\_  
Address: Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Memo: \_\_\_\_\_

DBA: \_\_\_\_\_

DBA Name: \_\_\_\_\_  
Address: Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Memo: \_\_\_\_\_

DBA: \_\_\_\_\_

DBA Name: \_\_\_\_\_  
Address: Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Memo: \_\_\_\_\_☐ CORPORATIONCompany Name: \_\_\_\_\_  
FEIN: \_\_\_\_\_  
SEIN: \_\_\_\_\_  
Relationship to Case: \_\_\_\_\_  
Business Phone #: \_\_\_\_\_  
Cell Phone #: \_\_\_\_\_  
Pager #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Memo: \_\_\_\_\_  
TIN Number: \_\_\_\_\_

INVESTIGATOR'S SIGNATURE

DATE

SUPERVISOR'S SIGNATURE

DATE

## BACKGROUND INFORMATION - CONVEYANCE

STATE OF CALIFORNIA  
INVESTIGATIONS DIVISION

Case Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Case Number: \_\_\_\_\_ Investigator: \_\_\_\_\_

Board Permits: \_\_\_\_\_  
 Board Permits: \_\_\_\_\_

☐ VEHICLE

Type: \_\_\_\_\_  
 Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Color: \_\_\_\_\_  
 VIN: \_\_\_\_\_  
 License No.: \_\_\_\_\_  
 State: \_\_\_\_\_

☐ VEHICLE

Type: \_\_\_\_\_  
 Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Color: \_\_\_\_\_  
 VIN: \_\_\_\_\_  
 License No.: \_\_\_\_\_  
 State: \_\_\_\_\_

☐ VEHICLE

Type: \_\_\_\_\_  
 Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Color: \_\_\_\_\_  
 VIN: \_\_\_\_\_  
 License No.: \_\_\_\_\_  
 State: \_\_\_\_\_

☐ OTHER

Type: \_\_\_\_\_  
 Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Year: \_\_\_\_\_  
 Color: \_\_\_\_\_  
 CF: \_\_\_\_\_  
 Tail #: \_\_\_\_\_

## REG OWNERSHIP INFORMATION

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_  
 State and Zip: \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_

INVESTIGATOR'S SIGNATURE

DATE

SUPERVISOR'S SIGNATURE

DATE

# **Investigations Division Policy and Procedures Manual**

## **Chapter Six**

### **Subpoenas**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## SUBPOENAS

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# SUBPOENAS

## CHAPTER SIX

### SUBPOENAS DUCES TECUM

600.000

#### AUTHORITY AND USE

600.005

The State Board of Equalization (BOE) is authorized by Section 15613 of the Government Code to issue a subpoena for the attendance of witnesses or the production of books, records, accounts and papers. A subpoena requiring a person to bring books, records, accounts, and papers with him/her is called a “subpoena duces tecum.” When, in the course of an audit or investigation of a business, the Board’s representative is denied access to business records which are necessary in order to carry out the functions of the Board, the subpoena power may be invoked. The Investigations Division (ID) will issue subpoena duces tecums to third party entities only. A subpoena duces tecum can be issued to a bank only with the approval of the Chief of the ID (Chief).

Reference BOE Legal Information Bulletin No.75, Audit Manual Chapter 4, Exhibit 3, or Compliance Policy & Procedures Manual §799.050, Subpoena Duces Tecum, for additional detail. Requests for subpoenas duces tecum must be approved by the immediate supervisor.

#### INFORMATION NEEDED

600.010

*Request for Subpoena Duces Tecum* (ID Intranet), addressed to the paralegal for the Legal Affairs Division (currently Ms. Wendy Keethe) will be used to request a draft subpoena duces tecum. The request to the paralegal must be authorized by the ID supervisor, Area Administrator, and approved by the Chief, or designee, and should include the following information:

1. The name of the individual whose records are sought, address of the business to which the records relate, and the permit number, if applicable.
2. The program area of law that is being investigated – e.g. Motor Vehicle Fuel Tax Law.
3. The purpose/reason for which the records are needed – e.g. Received untaxed shipments of cigarette and tobacco products through UPS, understatement of sales, verify deductions, establish volume of business.
4. The name of the entity to which the subpoena is directed – e.g. Federal Express, UPS.
5. The period of time to which the records relate.
6. List the records sought. The following are some examples:
  - Copies of all out-of-state shipping invoices (including name and address of shippers).
  - Copies of canceled checks or cash receipts for payment of delivery charges.
  - Records or ledger indicating all C.O.D. deliveries and amounts.
  - Any other records, matter, or things regarding any deliveries.
  - Worksheets used to complete quarterly/monthly returns.
  - Monthly sales journals.
  - Monthly royalty calculation sheets.
7. The name of the person to be served – indicate whether the person named as the person to be served is actually the custodian of records, a corporate officer, just a contact at the company/business to be served, or a sole proprietor; where the person works, and the work address.

Confidential text removed

8. List the specific reason, or reasons, why examination of the records is sought – e.g. “we requested the records from, *whomever*, custodian of records, and were refused on the grounds of customer confidentiality;” “to confirm or repudiate seized records;” or “validate customers, validate both resale and retail sales.”
9. The applicable Revenue and Taxation Code section – e.g. Sales and Use Tax Law (§7152).
10. The name, title, address, and telephone number of the ID supervisor before whom the person/records will be ordered to appear.
11. The name and telephone number of the contact person should there be any questions about the subpoenas.

*Note: The Legal Department will set the parameters for date, time of day, and place where the person/records will be ordered to appear.*

The above-mentioned information is necessary so that the subpoena and the declaration of materiality under penalty of perjury that supports the issuance of the subpoena may be prepared with the degree of particularity necessary to ensure legal requirements are met. A subpoena commanding a person to bring all of his/her records, or those of a corporation,

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## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### INFORMATION NEEDED (cont.) 600.010

would likely be held to be unreasonable and unenforceable as too broad if court action later becomes necessary to enforce the subpoena. It is of utmost importance that the documents sought be described in a way that clearly identifies them. The reasons why their contents are necessary and material to the Board's work in carrying out its duties must also be clearly specified.

### PREPARATION AND SERVICE OF SUBPOENA AND DECLARATION 600.015

Upon request and receipt of the necessary factual information, the paralegal will draft the subpoena duces tecum and the declaration of materiality. A request for the issuance of a subpoena should allow ample time for drafting the subpoena and declaration of materiality, time for service, and a reasonable time for the witness to appear. In response to the request, the paralegal will return the original declaration of materiality to be signed by the Chief of the ID or designee. The subpoena must have been signed by an attorney. Additionally, signed subpoenas will be accompanied by two other forms: Proof of Personal Service and Declaration of Custodian of Records.

Once the declaration of materiality has been signed by the Chief, or designee, and is returned to the Legal Department, the subpoena and the declaration of materiality will be served by mail on those businesses located out of state. For those businesses in California, the original subpoena duces tecum, declaration, proof of service, and two copies of each will be forwarded to the ID's contact person listed in the subpoena for personal service.

After the date of examination, the originals of the subpoena, declaration, and proof of service will be returned to the Legal Department. At the same time, an e-mail shall be sent to Ms. Wendy Keethe, with a copy to the investigator's supervisor, indicating whether satisfactory compliance/arrangements were or were not made for the subpoena. Use only the taxpayer's name and DBA as the subject of the e-mail. The account number(s) is not necessary. This e-mail eliminates the "follow-up memo." When the Legal Department initiates the service of the subpoena, copies of the subpoena and accompanying documents will be forwarded to the person to whom the subpoenaed records are to be presented.

In the case of a subpoena to a financial institution (such as a bank, savings and loan association, trust company, or credit union) requesting the records of a customer, the California Right to Financial Privacy Act requires (1) that the customer affected also be served with a copy of the subpoena and (2) that the customer have a ten-day period in which to notify the financial institution of his/her intention to move to quash (suppress) the subpoena.

### SUBPOENA DUCES TECUM TO EBAY AND PAYPAL 605.000

The following requirements must be met in order for a subpoena to eBay and/or PayPal be approved. First, the subpoenas shall state that the request is part of a criminal investigation and that the ID has reason to believe that eBay and/or PayPal has information that would assist in the criminal investigation. Second, the subpoenas shall include all identifying information the ID has available:

- ◆ Name of the individual whose records are being sought. An eBay seller name only will require a court issued subpoena for eBay and/or PayPal to release the information.
- ◆ Business name
- ◆ Corporate officer names if the entity is a corporation
- ◆ eBay seller name
- ◆ Address
- ◆ Telephone number
- ◆ E-mail address
- ◆ Website
- ◆ Bank and account number
- ◆ Merchant credit card processor and account number
- ◆ Social Security Number

eBay will provide the ID with the Account Home Page, which includes a summary of the account holder's financial and identity data and a monthly listing of eBay fees and fee credits (eBay fees are 5% of the final sales price – except for eBay Motors, which is a flat rate). If possible, eBay will also provide other eBay usernames used by the individual being sought. PayPal will provide the PayPal account summary information and payment history. Third, separate subpoenas need to be prepared for both eBay and PayPal but are to be sent to the same individual:

\_\_\_\_\_  
Mr. William Lasher  
\_\_\_\_\_  
eBay Inc.  
\_\_\_\_\_  
2145 Hamilton Ave.  
\_\_\_\_\_  
San Jose, CA 95125

## SUBPOENAS

### **SUBPOENA DUCES TECUM TO EBAY AND PAYPAL**

**(cont.)605.000**

Last, should contact with Mr. Lasher become necessary, the Chief of ID will make the contact. In the Chief's absence, requests are to be made through the Northern California Area Administrator. The request for contact should be made through the staff's chain of supervision.

### **SUBPOENA DUCES TECUM - AN ALTERNATIVE TO A SEARCH WARRANT**

**610.000**

For the purpose of elevating an investigation to a case, investigators may wish to consider the use of a subpoena duces tecum as an alternative to a search warrant. Investigators need to allow ample time for the preparation and service of the subpoena. Investigators should realize they have very little control over the timing of the process. Consideration should be given to the following before pursuing a subpoena duces tecum as an alternative to a search warrant:

- efficiency - in some cases, the party or whom the subpoena is served may demand monetary compensation for the preparation of the records under the subpoena. There are also several document transfers from the preparation of the subpoena duces tecum to the presentation of the subpoenaed records. As such, there is risk of misplacing documents and thus the process may be substantially delayed.
- legality - District attorneys often advise that a Board subpoena is an administrative process. If the subpoenaed records cannot be properly authenticated, the records obtained cannot be admitted into evidence to support a criminal prosecution in a court of law.

# **Investigations Division Policy and Procedures Manual**

## **Chapter Seven**

### **Search Warrants**



Investigations Division  
California State  
Board of Equalization

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## SEARCH WARRANTS

### CHAPTER SEVEN

#### **AUTHORITY 700.000**

##### **CONSTITUTIONAL AUTHORITY 700.005**

The Fourth Amendment to the Constitution of the United States is the basic authority for search and seizure. It states:

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

##### **STATUTORY AUTHORITY 700.010**

Penal Code (PC) Sections 1523-1542 provide the statutory authority for search and seizure.

#### **DEFINITION – SEARCH WARRANT 705.000**

“A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding her or him to search for . . . personal property, [and] bring the same before the magistrate.” (PC§1523).

#### **BACKGROUND 710.000**

The Investigations Division (ID) will seek a search warrant only when staff finds evidence of criminal tax evasion activity and there is little prospect of obtaining evidence relevant to the case without use of this additional investigative tool. There are three primary parts to a search warrant: affidavit, statement of probable cause, and the search warrant itself.

The statutory grounds for issuance of a search warrant are set forth in PC§1524. Issuance of a search warrant must be based upon probable cause naming or describing with reasonable particularity, the person to be searched or searched for, describing with reasonable particularity, the property, thing or things, and the place to be searched (PC§1525).

#### **CONSIDERATIONS REGARDING THE USE OF SEARCH WARRANTS 715.000**

Search warrants are used during an investigation when it is believed that additional information or/and evidence will be located at the business, residence, vehicle, or other location that will aid staff in its investigation.

No set of specific all-inclusive guidelines can be prescribed to be followed in all instances. Each situation must be analyzed in the light of its particular facts and circumstances. To this end, there is no substitute for good judgment. Investigators should give serious consideration to the legal as well as the practical problems that could be encountered with a search warrant.

Some factors investigators should consider include:

- Could the same information be obtained by investigative subpoena?
- Is there a possibility that documents will be destroyed rather than turned over if an investigative subpoena is served?
- Is there a need to act quickly in order to preserve evidence?
- Can probable cause be established?

#### **SEARCH WARRANT PACKAGE 720.000**

##### **SEARCH WARRANT 720.005**

The search warrant must be executed within 10-days of issuance (PC § 1534). The day the warrant is signed by the magistrate is “day zero,” with “day one” being the next day. Saturday, Sunday and holidays are included in the calculation.

Use the ID approved template for the Search Warrant.

## SEARCH WARRANTS

### SEARCH WARRANT FORMAT

(cont.) 725.000

The Legal Department has provided a sample of a combined form which meets all statutory requirements and is the form published by the California District Attorneys' Association.

See Appendix A for instructions and samples. These samples are also available on the ID web site. Approval for a search warrant package goes through your supervisor, your area administrator, the HQ ID reviewer, the Chief, and the Legal Department using ID form ID-014A. All search warrant packages submitted for approval are to be submitted having used the Pleading Wizard in Word and must follow the sample guidelines. Edits made by the ID HQ Reviewer and the Legal Department shall be entered by the investigator.

### OBTAINING A SEARCH WARRANT

730.000

The *Search Warrant Checklist* is to be worked on during this entire process.

1. The lead investigator will prepare an affidavit, probable cause statement, and search warrant (SW package) to be presented to the magistrate.
2. The lead investigator will submit the SW package to the immediate supervisor and then the area administrator for approval. Once the area administrator approves the package, the package will be submitted to the ID HQ Reviewer and then the Chief for approval. If the Chief approves the package, the Board's Legal Department will review and approve the SW package prior to submittal to the DA. The time allotted for this review is two weeks from receipt. *Note: All contact with the Board's Legal Department in this process will be made by the supervisor or designee.*
3. While the SW package is going through the necessary approvals, the lead investigator may obtain the DA's involvement in the investigation to make sure the DA would be willing to file the case for criminal prosecution. If the DA does not recommend criminal prosecution, the lead investigator will note the concerns and discuss possible case alternatives with the supervisor and area administrator.
4. The lead investigator and his/her supervisor should arrange time and resources with the assisting law enforcement agency(ies) to develop the search warrant plan, determine necessary staffing requirements, and decide on the timing for the service of the search warrant.

~~Note: Supervisors will make and document the contact with the assisting law enforcement agency to be used for the search warrant.~~

5. The DA, if applicable, and the participating law enforcement agency should see the final version of the warrant prior to taking it to the judge for signature.
6. Check with the Clerk of the Court to identify the protocol for:
  - locating a judge – some courts designate a duty judge for signing warrants while other courts let the investigator search for any judge available, and
  - 6. • to learn the court's protocol for recording search warrants and returns. After checking with the Clerk of the Court proceed to the judge and present the warrant for signature, then follow the court's protocol for recording.
  - Present the warrant to the judge for signature and file the signed warrant with the clerk of the county.

7. Provide the Board's Legal Department with a signed and date stamped copy of the search warrant.

8. The search warrant is then executed.

*Note: All ID search team members are to treat all occupants of search premises, particularly children, with the utmost sensitivity and consideration.*

9. A SW Advice Distribution (Exhibit 2) shall be prepared and submitted in advance to the Chief to be distributed to the Executive Director and select management staff on the day of the search warrant advising them of the search.
10. If new property or a new location (property not previously identified in the approved search warrant) vital to the case is discovered during the execution of a search warrant, the investigator has two options to consider: obtain a supplemental search warrant (spin-off) or obtain the consent of the person in control of the premises to search other locations. If circumstances allow, preference should be given to obtaining a

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### OBTAINING A SEARCH WARRANT

(cont.) 730.000

11. supplemental search warrant. Consent to search the new location can be obtained from the person in control of the location by obtaining their signature on a completed BOE-883, *Consent to Search*. A consensual search, however, has two inherent problems.

- Consent can be withdrawn at any time and the search stopped.
- A *consent*, to be lawful, must be "*freely and voluntarily*" given. The prosecution bears the burden of showing that the defendant's consent to search is voluntary and unaffected by coercion. (*Schneckloth v. Bustamonte, supra*; *Estes v. Rowland* Cal.App.4th 508, 527; *United States v. Bautista* (9th Cir. 2004) 362 F.3rd 584.) See the California District Attorneys Association's *Search Warrant*, Chapter 9, *Oral Affidavits, Telephone and Facsimile Search Warrants*, for definitions and further details.

\*Note: *the Probable Cause Section of the spin-off warrant should be separate from the remaining documents in the Spin-off warrant.*

12. The warrant shall be returned to the issuing authority within 10 days of issuance (PC §1534). The spin-off warrant must be returned within the same time limit as the original warrant. Its statute of limitation expires on the same date that the original warrant expires (10 days after being signed by the magistrate.)

~~11.~~13. After examination of the seized evidence, the case, if warranted, is then forwarded to the DA for prosecution. See the ID manual chapter on *Prosecution Packages*.

### GENERAL SEARCH GUIDELINES

735.000

These guidelines are to be addressed in a pre-search meeting with all ID personnel that will be involved in the search.

1. Conduct a briefing before the execution of the search warrant. This meeting normally is held the day of or the day before the execution of the search warrant depending upon the circumstances.

1.1 All persons to be involved in the execution of the search warrant should attend.

1.2 The lead investigator will pass out "Search Warrant Kits." These will be prepared by the ID evidence custodian. The lead investigator should review the kits to ensure they are appropriately stocked.

Where there are multiple locations, team leaders should conduct team briefings.

Generally, the above will be in-office briefings. There should also be a combined briefing with ID search team members and law enforcement.

2. Reserve or designate a secluded area close to the search site/or staging area(s).

2.1 Your peace officer (DA Investigator, CHP Officer, DOJ Special Agent, etc.) should meet with local peace officers to go over the entry plan and allow everyone time to "suit up."

2.2 Be in the staging area at the time designated. Do not arrive late.

2.3 If it is practical, remain at the staging area until the peace officers secure the location to be searched. If it is not practical to remain at the staging area, then remain a safe distance away from the search site until law enforcement has secured the search site.

2.4 Board staff must not enter the location until the lead peace officer notifies the ID lead investigator that the location is safe and secured.

2.5 The ID lead investigator will tell Board staff when to proceed into the search location.

2.6 Decide before traveling to the search site which vehicles will be going. ID staff will caravan to the search site after the area is secured by peace officers.



## SEARCH WARRANTS

### GENERAL SEARCH GUIDELINES

(cont.) 735.000

#### 3. Dress Code

##### 3.1 Casual, comfortable clothing

3.1.1 Jeans ok; however, no holes or major tears.

3.1.2 No T-shirts. BOE or ID clothing is the exception.

3.1.3 Board jackets.

Remember you are a professional and represent the Board, so dress appropriately.

#### 4. Conduct

4.1 Treat all occupants of search sites, particularly children, with sensitivity and consideration.

4.2 Be professional. You are representing the Board of Equalization.

4.3 No smoking in the search locations. If you must smoke, leave the premises.

4.4 Listen and follow the search site ID lead investigator's and peace officer's instructions.

4.5 Remove items carefully and, to the extent possible, leave the locations in the same condition you found them.

4.6 Do not make any derogatory comments.

4.7 Do not discuss the case on location. Be aware of who is around you.

4.8 Practice safe work habits:

4.8.1 Use proper lifting techniques.

4.8.2 Do not go into any room/area not previously secured by peace officers.

4.8.3 Do not take unnecessary risks.

4.8.4 Be alert and cautious.

4.8.5 Immediately report any cash, drugs, or guns to peace officers and the search site lead investigator.

4.8.6 If information is discovered which may be privileged, i.e. attorney, physician, psychotherapist, or clergy person, immediately notify the lead investigator. The documents, provided they are within the description of the property the warrant authorizes the Board to seize, will be placed in an envelope, sealed, and marked with the date and location found. Place a notation on the outside of the envelope that reads, "Documents appear to be protected by attorney-client, etc., privilege."

4.8.7 Avoid previously searched rooms. Initial the room label or the area label after a room or area has been completely searched so that other searchers will be alerted that the room or area has been searched. It is recommended to complete the search of a room or area before searching a different room or area. Be cautious in high traffic areas and in any room being searched that must be crossed to reach another area.

4.8.8 Search the suspect's vehicle(s) as soon as possible to obtain the key(s) or consent to search before the suspect decides to leave the premises.

4.8.9 ID staff should obtain keys, passwords, or codes (computer, cellphones, safes, etc.), or consent to search as soon as possible before suspect(s) leave the premises or refuse to provide this information.

#### 5. Transportation

5.1 The ID lead investigator will meet with team members to make arrangements for transportation to and from search locations.

#### 6. Food/Drinks/Breaks

6.1 Bring your own snack and beverages.

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### GENERAL SEARCH GUIDELINES

(cont.) 735.000

- 6.2 Do not patronize the search site to purchase food or beverages.
- 6.3 Meals are to be taken outside the search premises.
- 6.4 Leave the search site only at the time scheduled for break and return on time. Breaks are to be staggered so as to avoid all staff being gone at the same time.
- 7. Comments/Miscellaneous
  - 7.1 Be on time.
  - 7.2 Expect a long day.
  - 7.3 Time code: XX 19
  - 7.4 Do not talk to anyone from the press, employees or family members of the subject of the search, or witnesses.
  - 7.5 Restrooms
    - 7.5.1 Search site facilities may be used if approved by the peace officer at the location.
    - 7.5.2 Off site facilities may have to be used. Offsite restroom breaks will be coordinated through the search site ID lead investigator.
  - 7.6 Only the ID lead investigator, or designee, may talk to employees, customers, or others as necessary. If approached and questioned by the press, the response should be “no comment.”
  - 7.7 Service of the search warrant involves confidential taxpayer information. Consequently, we are prevented by law from releasing information about the search to anyone not directly involved in the search. Do not discuss the search with family or friends before or after the search occurs.

### QUESTIONS TO BE ADDRESSED AT BRIEFING

740.000

Some frequently asked questions with their respective answers.

- 1. Q. What if the subject(s) of the search warrant and/or occupants demand an attorney regarding the search warrant?
  - A. The suspect(s) and/or occupants is/are permitted to call an attorney. The lead law enforcement officer will determine the appropriate time and circumstances. To assure ID staff safety, the ID lead or designee may want to dial the attorney’s phone number for the suspect to make sure that it is the attorney that the suspect is speaking to. Additionally, the ID lead may want to request the suspect to speak only in a language that the ID lead or ID staff understands (English).
- 2. Q. If an attorney arrives at the premises during the search, will he/she be allowed to enter?
  - A. The decision is at the discretion of the peace officer in charge.
- 3. Q. What if searchers, during the search, find weapons, contraband, etc.?
  - A. Do not touch; notify a peace officer – who will secure the weapons, contraband, etc., and the lead investigator will be notified.
- 4. Q. What if cash/gold coins/gold bullion/silver, etc. are found?
  - A. Do not touch; notify the ID lead investigator and the peace officer – who will secure and receipt the cash/gold coins/gold bullion/silver, etc. If cash is found, the lead investigator shall notify his/her supervisor.
- 5. Q. What if subject(s) and/or occupants request the names and titles of various search team members?
  - A. The subject(s) and/or occupants are not entitled to any such information on demand during the search. All documents relating to a search warrant become open to the public as judicial records following the execution and return of the search warrant (PC§1534).

## SEARCH WARRANTS

### QUESTIONS TO BE ADDRESSED AT BRIEFING

(cont.) 740.000

6. Q. What if subject(s) and/or occupants cause a disturbance or try to impede/obstruct the search?
  - A. The peace officer shall handle this situation.
7. Q. Will computers be seized?
  - A. On occasion. The ID forensic computer person will determine the status of all computers and similar electronic media.
8. Q. Do we alter computers in any way?
  - A. No.
9. Q. What if incriminating financial documents are found for periods not covered in the warrant?
  - A. Get authorization for voluntary search, leave the documents, or have the warrant amended to include the additional documents.
10. Q. What if incriminating evidence is found for people not mentioned in the search warrant?
  - A. Get authorization for a voluntary search from the individual the evidence pertains to, leave the evidence, or have the warrant amended to include the additional evidence.

### EXECUTING A SEARCH WARRANT

745.000

These procedures are to be followed for obtaining and executing a search warrant.

1. After the approved probable cause statement/affidavit and search warrant are returned from the Legal Department, provide the DA and peace officers assigned to the case with a copy.
2. Proceed to a judge to have the search warrant read and signed.

***NOTE:** From this point on the peace officer is responsible for executing the warrant. The following outline assumes the procedures are compatible with how the peace officer wishes to proceed.*

3. Peace officers make entry. The search warrant may be served by the peace officers or by BOE Staff, having LPO status.
4. Peace officers secure location by doing the following:

- 4.1 Peace officers get all occupants settled, restricting them to a certain area of the premises. Peace officers may let them leave and not return until after the search is completed or place them under arrest. These decisions are up to the peace officers. However, the ID lead investigator may make his/her wishes known, i.e., SAFETY of the ID search team, the desire that the occupants NOT be permitted to roam around the premises, or be permitted to talk to ID team members during the search.

***NOTE:** Many peace officers will run serial numbers of all weapons found at the search site prior to the ID search team search to determine whether they are legally owned.*

5. After the site is secured, the peace officers will call for the ID search team to enter the search site.
  - 5.1 The search site ID lead investigator will notify the command center, if there is one, prior to entering the search location.
  - 5.2 The search site ID lead investigator and camera person will be the first persons to enter the search location. The camera person will video tape the entire premises.
    - 5.2.1 The lead investigator, mapper, and a computer forensic specialist (if present at the location) will conduct a walk-through of the search location after it has been video taped.
    - 5.2.2 After the walk-through is completed and if computers are found, the ID lead investigator should call and give a computers found report to the ID's computer forensic specialist, if he/she is not on location.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### EXECUTING A SEARCH WARRANT

(cont.) 745.000

- 5.3 All other search team members will wait outside the search area until notified by the ID lead investigator.
- 5.4 Peace officers will be guarding the perimeter of the premises, preventing anyone not authorized from entering.
  - 5.4.1 Any team member who notices that the premises are not being properly secured or notices any unsafe condition should immediately report such to the search site ID lead investigator.
6. Identifying rooms and areas.
  - 6.1 The search site ID lead investigator will determine the order in which areas/rooms are to be searched.
  - 6.2 Following the designated order, the mapper will map the areas/rooms to be searched on paper. The mapper will designate each area or room with a number for identification purposes (Room 1, Room 2 , etc.).
  - 6.3 The mapper will physically label each area/room and object with a pre-made identification sign indicating the appropriate designation letter and number.
  - 6.4 The camera person will follow the mapper and videotape or take photographs of the areas to be searched. Due to time constraints, the camera person may video the area and then allow the mapper to place the room and wall identifiers on the areas to be searched.
  - 6.5 The ID lead investigator will contact the command center to report any potential or actual problems and provide periodic updates.
7. After areas/rooms are mapped and photographed, the search of the premises begins.
  - 7.1 The ID lead investigator will coordinate search activities by assigning specific rooms and areas to the searchers waiting outside.
  - 7.2 Searchers will methodically and systematically search and gather the appropriate items as identified in the search warrant.
    - 7.2.1 Envelopes with labels already attached will be provided for use when necessary.
    - 7.2.2 Item(s) to be seized will be inserted in the envelopes/boxes.
  - 7.3 When the envelope/box is full, the searchers will close the envelope/box and fill-in the label with the following information:
    - 7.3.1 Area/room numbers (Room#1, Room #2, etc.)
    - 7.3.2 Item numbers will be provided by the recorder.
    - 7.3.3 Description of the items. (Example: copies 1993 Federal/State Income tax returns, file labeled "May 1992 sales journal", etc.)
  - 7.4 Once an object (a desk, closet, cabinet, etc.) has been searched, the searcher will identify the object as having been searched by writing "Done" on a Post-it note, initialing the note, and sticking the Post-it to the object.

If the searcher is unsure whether an item may be seized under the terms of the search warrant, the searcher should flag the item and seek advice from the search site lead investigator or finder.
  - 7.5 The lead investigator and/or finder will examine all items flagged by the searchers for relevancy to the search warrant.
    - 7.5.1 If the lead investigator agrees the items should be seized, the items should be packaged and marked and the evidence taken to the recorder.
    - 7.5.2 The finder will assist the recorder in the identification of items seized.
  - 7.6 If any cash, unstamped cigarettes, illegally stamped cigarettes, and/or commodities, such as gold, silver, etc., are found, immediately inform the lead investigator and peace officer. DO NOT HANDLE OR REMOVE. The item should be immediately inventoried. If it is cash, the cash should be counted by two ID staff members, in the presence of the peace officer, or, if possible, in the presence of the taxpayer or the person previously in possession or control of the cash. Pictures or video should be taken. Once this is complete, return the cash to the

## SEARCH WARRANTS

### EXECUTING A SEARCH WARRANT

(cont.) 745.000

taxpayer or person in control of the money when it was discovered. In a jeopardy situation, the lead investigator will contact his/her supervisor to determine what will be seized.

- 7.7 If any guns, other weapons, narcotics or unusual and/or apparently illegal items are found, immediately inform the lead investigator and contact the nearest peace officer. DO NOT REMOVE OR TOUCH ANY SUCH ITEMS.
  - 7.8 If information is discovered which appears to be privileged and confidential, i.e. correspondence or advice from an attorney, physician, psychotherapist, or clergyperson, notify the lead investigator immediately. The documents, if within the description of the property subject to the warrant, will be placed in an envelope, sealed, and marked with the date and location, and the notation on the envelop will read, "Documents appear to be protected by attorney-client, etc., privilege."
  - 7.9 After an assigned room has been searched, searchers will go to the lead investigator for further instructions. Do not re-enter a room/area after it has been searched unless directed to do so by the lead investigator.
    - 7.9.1 If not immediately reassigned to another search area, searchers are to go to a designated area until given further instructions by the search site lead investigator.
  - 7.10 The lead investigator will contact the command center or lead supervisor to report any potential problem or actual problems, provide periodic updates, and to reallocate resources, if necessary.
8. The end of the search.
- 8.1 The lead investigator will assess the entire location and determine when to end the search.
  - 8.2 After the lead investigator determines the search is complete, the camera person will take pictures of the search site again. The mapper will remove the room identification signs.
  - 8.3 When ready, the recorder will give all copies of the inventory sheet to the lead investigator. The lead investigator will provide the copies to the taxpayer, if available. If the taxpayer is not available, a copy of the inventory list shall be left with the person in control of the premises (i.e. employee, spouse, etc.).
  - ~~8.38.4~~ 8.4 The peace officer will secure the premises.
  - 8.5 A Board scene lead having LPO status will sign and provide a copy of the property receipt at each one of the search warrant locations.
  - 8.6 The lead investigator will notify the command center or lead supervisor when the search is over.
  - 8.7 Prepare and submit the Return of Search Warrant within 10 calendar days of the warrant issuance.
  - 8.8 All search team members will meet at an assigned location for a debriefing.
  - 8.9 Upon returning to the office, each team leader will prepare a memorandum as soon as possible after the search setting forth information concerning where each search was conducted, who was present, what was observed, the duties performed, and any statements made by persons at the search. Each team member will review and sign the memorandum. This memorandum will refresh the team member's memory if he/she is called to testify during the trial of the case and will help prevent conflicting testimony.

### DEBRIEFING

750.000

All staff involved in the search warrant will meet at a designated location for a debriefing after the search is executed. Possible topics of discussion can include: amount of evidence seized, contraband discovered, encounters with the media, problems that occurred during the search, etc.

### AFTER ACTION REPORTS

755.000

An "After Action Report" is required to be completed by staff who participated on a search warrant,. The report should include, but not be limited to:

Site Lead's Search Warrant Report

Date, Time, of entry, Location of Entry

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### AFTER ACTION REPORTS

(cont.) 755.000

Participants at location, roles of each participant

Observations: Records, lack of records, product(s), cash, unusual activity, illegal activity, a description of items seized at the location.

Time of exit from the location

#### Site Participant's Report

Date, Time, Location of Entry

Specific search warrant role (searcher, mapper, recorder, etc.)

Observations: Records, lack of records, product(s), cash, unusual activity, illegal activity, what was seized at the location.

Time of Exit from location

All Site Lead Reports are to be reviewed by the immediate supervisor and then forwarded to the lead investigator. Assigned Site Participant Reports are to be reviewed for consistency by the Site Lead, and then by the immediate supervisor. Once the report has been reviewed and approved, it is to be forwarded to the attention of the lead investigator. Any "After Action Report" generated as the result of ID staff assisting another agency in a search warrant is not to be disclosed to anyone outside the Board without the Area Administrator's or Chief's approval.

The ID Intranet has a sample After Action Report format available.



**SAMPLE FORMAT FOR STATEMENT OF PROBABLE CAUSE**

**STATEMENT OF PROBABLE CAUSE**

The undersigned declares:

*[Use double-spaced, regular size type throughout the Statement.]*

**Experience and Training of Affiant**

*[Include a brief description of the affiant's education, experience and training, including the number of years the affiant has worked and where, and the number and types of cases the affiant has worked on. The goal is to convince the magistrate that the affiant is well-qualified to determine whether statutes have been violated, and whether evidence of such violations is likely to be found in the areas to be searched.]*

**Summary of the Case**

*[If the affidavit is lengthy or the case is very complicated, include a short (i.e. one page or less) overview of the case.]*

**Summary of the (State applicable program) Law**

*[Use this area to give a short synopsis of the applicable law, may use "Analysis" of the applicable tax law as reference.]*

*[Tailor this section based on the specific case at hand. If other sections*



1  
2  
3 of the Tax Law are relevant, summarize them briefly  
4 here and include them in the attachment. For example, if the case  
5 involves a grocery store where many of the sales are exempt, include  
6 a statement that a retailer may deduct exempt sales from total sales to  
7 arrive at a taxable measure, list a few common exemptions,  
8 and state that the retailer must be able to provide supporting documentation  
9 for any exemption claimed. Then include the relevant exemption sections  
10 in the attachment.]

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21 **Results of Investigation**

22 [Include a summary of the results of the investigation which lead you  
23 to conclude that it is likely that a crime has been committed. Keep  
24 facts in chronological order, and do not include every detail from  
25 the investigation. Unless the case is unusually complicated, you should  
be able to describe the investigation in two or three pages. Remember,  
you have already convinced the magistrate that you know what you are  
talking about.]

[Conclude that, based on the facts stated, it is likely that the suspects have  
violated certain laws by certain conduct.]

[State your reasons for believing, based on your experience, that  
the property to be seized will be found at the locations to be searched.]

21 **Computer Data**

22 [Use this area to drop in the section titled "Computer Data" from the ID Web.]  
23  
24  
25





1  
2  
3 **Use of Non-Peace Officers to Assist with Search**

4  
5 Penal Code Section 1530 authorizes peace officers executing a search warrant to be assisted by  
6 non-peace officers. (See People v. Superior Court (Moore) (1980)104 Cal. App.3d.1001).

7 During the execution of the present search warrant, your affiant intends to be assisted by  
8 personnel from the BOE, as their expertise will assist your affiant in identifying the property to be seized.

9  
10 Should the issuing magistrate disapprove of your affiant's intended use of non-peace officers to  
11 assist in executing the search warrant, the magistrate should so indicate by writing on the face of the  
12 search warrant.

13 **Conclusion**

14 *[Conclude that, based on your training and experience and the information*  
15 *contained in the statement, there is probable cause to believe that the*  
16 *property described in the proposed search warrant is at the locations*  
17 *described, and that the property is seizable pursuant to Penal Code*  
18 *Section 1524(a) for the reasons indicated in the proposed search warrant.*

19 *If the Statement of Probable Cause is very lengthy, begin this section with*  
20 *a short summary of the results of the investigation.]*

21  
22 \_\_\_\_\_ **[Signature of Affiant]**

23 **Date**

**[Typed name and title of affiant]**

## SEARCH WARRANTS

### Computer Data

#### APPENDIX A

770.020

Based upon my training, experience, and information related to me by BOE's forensic examiner, peace officers, and others involved in the forensic examination of computers, I know that computer data can be stored on a variety of systems and storage devices including hard disk drives, floppy disks, compact disks, magnetic tapes, and memory chips. I also know that during the search of the premises it is not always possible to search computer equipment and storage devices for data for a number of reasons, including the following:

- A. Searching computer systems is a highly technical process that requires specific expertise and specialized equipment. There are so many types of computer hardware and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with a computer forensic examiner who has specific expertise in the type of computer, software application or operating system that is being searched.
- B. Searching computer systems requires the use of precise, scientific procedures which are designed to maintain the integrity of the evidence and to recover "hidden", erased, compressed, encrypted, or password-protected data. Computer hardware and storage devices may contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. Since computer data is particularly vulnerable to inadvertent or intentional modification or destruction, a controlled environment is essential to conducting a complete and accurate analysis of the equipment and storage devices from which the data will be extracted.
- C. The volume of data stored on many computer systems and storage devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing forty gigabytes of data are now commonplace in desktop computers. Consequently, each non-networked, desktop

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computer found during a search can easily contain the equivalent of 7.5 million pages of data, which, if printed out, would completely fill a 10' x 12' x 10' room to the ceiling.

D. Computer users attempt to conceal data within computer equipment and storage devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Computer users can also attempt to conceal data by using encryption, which means that a password or device, such as a "dongle" or "keycard", is necessary to decrypt the data into readable form. In addition, computer users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography".

For example, by using steganography, a computer user can conceal text in an image file which cannot be viewed when the image file is opened. Therefore, a substantial amount of time is necessary to extract and sort through data that is concealed or encrypted to determine whether it is evidence of a crime.

Your affiant consulted with BOE Computer Forensic Examiner [Insert Name(Name)] regarding the aspects of properly retrieving and analyzing electronically stored computer data.

(Name) has worked as a Computer Forensic Examiner for the past [number of years]. He has [X hours] of formal forensic training and has attended such classes and programs as [list examiner's classes and associations].

Based on his knowledge and training, (Name) has advised me that to properly retrieve and analyze all electronically stored (computer) data, to document and authenticate such data, and to prevent the loss of data either from accidental or deliberate programmed destruction requires on site and laboratory analysis by a qualified computer examiner. To effect such accuracy and completeness may require the seizure of all computer equipment and peripherals which may be interdependent, the software to operate the computer system, data security devices (including passwords and decryption keys), and related instruction manuals which

## SEARCH WARRANTS

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contain directions concerning the operation of the computer system and software programs. This is because the peripheral devices, which allow users to enter or retrieve data from storage devices, vary widely in their compatibility with other hardware and software. Many system storage devices require particular input/output devices in order to read the data on the system. It is important that the computer system be re-configurable to accurately retrieve the evidence.

A BOE Computer Forensic Examiner will conduct a search of the computer(s) for relevant data. The Computer Forensic Examiner will employ techniques to assure that only the items authorized by the warrant will be searched and seized and to protect the integrity of the records. If, for technical reasons or volume of evidence, the Computer Forensic Examiner cannot conduct the search on-site, authorization for removal of the system is requested. If, after inspecting the input/output devices, software, documentation and data security devices, the BOE Computer Forensic Examiner determines that these items are no longer necessary to retrieve and preserve the data evidence, the BOE will return them absent further order of the court.

As part of the search of the computer system and peripherals, the Computer Forensic Examiner may need to make a mirror image copy of the hard drive(s), backup media, floppy diskettes, disk cartridges, CD-ROMS, optical disks, printer buffers, smart cards, memory calculators, electronic dialers, or electronic notebooks on which data was stored.

A mirror image copy is an exact copy of the storage media. This is necessary to accurately reproduce the documents on the storage devices and to preserve the integrity of the data. The search will then be conducted using the mirror image copy. Permission is requested for the Computer Forensic Examiner to make a mirror image copy of the above storage media and conduct a search of the computer systems, hardware, software, and backup media for the specific items described in the Affidavit and Attachment B.

The Computer Forensic Examiner will provide the investigating agent(s) only those documents and evidence which is set forth in this Affidavit.

The term "records", "documents", and "materials" as used above include all of the items of evidence more fully described in Attachment B in whatever form and by whatever means such

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

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records, documents, or materials, their drafts, or their modifications may have been created or stored, including, but not limited to any handmade form (such as writing, drawing, painting, with any implement on any surface, directly or indirectly); any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures and photocopies); any electrical or magnetic form (such as tape recordings, cassettes, compact disks); and/or any information on an electronic or magnetic storage device (such as floppy diskettes, hard drives, backup media, disk cartridges, CD-ROMS, optical disks, printer buffers, smart cards, memory calculators, electronic dialers, or electronic notebooks); as well as printout or readouts from any magnetic storage device.



## Property B

- B. In searching for data capable of being read, stored or interpreted by a computer, law enforcement personnel executing this search warrant will employ the following procedure:
1. Upon securing the premises, law enforcement personnel, and/or State Board of Equalization personnel, trained in searching and seizing computer data (the "computer forensic examiner") will make an initial review of any computer equipment and storage devices to determine whether these items can be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.
  2. If the computer equipment and storage devices cannot be searched on-site in a reasonable amount of time, then the computer forensic examiner will determine whether it is practical to copy the data during the execution of the search in a reasonable amount of time without jeopardizing the ability to preserve the data.
  3. If the computer forensic examiner determines it is not practical to perform an on-site search or make an on-site copy of the data within a reasonable amount of time, then the computer equipment and storage devices will be seized and transported to an appropriate location for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.
  4. Any data that is encrypted and unreadable will not be returned unless law enforcement personnel, or State Board of Equalization personnel assisting them, have determined that the data is not (1) an instrumentality of the offense specified in the attached affidavit, (2) a fruit of the criminal activity, (3) contraband, (4) otherwise unlawfully possessed, or (5) evidence of the offense specified in the attached affidavit.
  5. In searching the data, the computer forensic examiner may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In



## Property B

addition, the computer forensic examiner may search for and attempt to recover "deleted", "hidden", or encrypted data to determine whether the data falls within the list of items to be seized as set forth herein.

6. If the computer forensic examiner determines that the computer equipment and storage devices are no longer necessary to retrieve and preserve the data, these items will be returned within a reasonable period of time from the date of seizure.
- C. In order to search for data that is capable of being read or interpreted by a computer, the following items may be seized and searched, subject to the procedures set forth above:
1. Any computer equipment and storage device capable of being used to commit, further, or store evidence of the offense described in the attached affidavit;
  2. Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;
  3. Any magnetic, electronic, or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
  4. Any documentation, operating logs, and reference manuals regarding the operation of the computer equipment, storage devices, or software;
  5. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
  6. Any physical keys, encryption devices, dongles, and similar physical items that are necessary to gain access to the computer equipment, storage devices of data; and



## Property B

7. Any passwords, password files, test keys, encryption codes, or other information necessary to access the computer equipment, storage devices or data.
8. Investigating officers and those agents acting under the direction of the investigating officers are authorized to access all computer data to determine if the data contains "property," "records," and "information" as described above. If necessary, investigating officers are authorized to employ the use of outside experts, acting under the directions of the investigating officers, to access and preserve computer data.



**ATTACHMENT A**

YOU ARE, THEREFORE COMMANDED TO SEARCH:

LOCATION #1 – 700 S. Pacific Avenue, Monterey Park, California 95814

This is the business location of "Big Ed's Sweets and Cigars", which is on the first floor of a 3-story pink stucco building. The store, located on the corner of S. Pacific Avenue and 7<sup>th</sup> Street, has a large plate glass window on which the words "Sweets-Cigars-Ammo" are lettered in green and gold. The public entrance faces Pacific Avenue. There is a service entrance and loading dock at the back of the store facing the back alley.

The areas to be searched include all rooms, closets, computers, offices, safes, storage areas, trash containers, and any other parts of the business, as well as the loading dock and alley adjacent to the business and outbuildings connected with the business.

LOCATION #2 – 101 Hillcrest Road, Monterey Park, California 95814

This is the residence of Edward "Big Ed" Dash and his wife Edwina "Little Ed" Dash, and is located inside a gated residential community called Serendipity East. There is a security guard house situated at the gate. The house is a distinctive gray and purple colonial with an attached 4-car garage, and is located at the end of a cul-de-sac near a golf course.

The areas to be searched include all rooms, closets, computers, furniture, cabinets, safes attics, storage containers, basements, garages, and other rooms, as well as the surrounding grounds, storage areas, trash containers, and outbuildings.

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5 VEHICLES

6 A medium blue 1996 Cadillac Brougham d'Elegance 4-door sedan with California license plate  
7 number DASH R WE. This vehicle is believed to be at or near 101 Hillcrest Road, Monterey Park,  
8 California. Also, any other vehicles registered to Edward and/or Edwina Dash and parked at or near  
9 either Location #1 or Location #2.

10 The areas to be searched include the inside of the vehicle, glove box, trunk, and any storage  
11 areas or boxes.

12 PERSONS

13 The person known as Edward Dash or "Big Ed", who is a Caucasian male, approximately 45  
14 years old, and believed to be at either Location #1 or Location #2. The person to be searched is  
15 described as having shoulder-length black hair, brown eyes, and appears to be around 6 feet tall and  
16 appears to weigh over 200 pounds.

17 **FOR THE FOLLOWING PROPERTY:**

18 A. All records and documents, both originals and copies, dated within the period from January  
19 1,1992, to the present date, or undated for Location #1 or Location #2:

- 20 1. Federal and State income tax returns, including any supporting schedules, attachments, or  
21 workpapers, such as 1099 Forms or W-2 forms;  
22 2. State sales tax returns, complete with any supporting schedules or attachments;  
23 3. General ledgers, including any subsidiary journals or ledgers;  
24 4. General journals;  
25 5. Sales journals including any subsidiary journals or ledgers;

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6. Purchases or cost journals including any subsidiary journals or ledgers;
7. Cash receipts journals;
8. Cash disbursement journals;
9. Check register tapes;
10. Payroll journals;
11. Receipt books or journals including accounts receivable cards;
12. Savings account records including passbooks and bank statements;
13. Checking account records including bank statements, check register tapes, deposit slips, canceled checks, check stubs, and wire transfer documentation;
14. All sales invoices, debit memos, and credit memos;
15. Purchase invoices and expense invoices;
16. Transportation records (including but not limited to) freight bills, delivery tickets, bills of lading, dispatch records, and transportation logs;
17. Credit applications with any supplier;
18. Contracts including lease agreements, sales agreements, purchase agreements, purchase orders, acceptance statements, and closing statements concerning Big Ed's Sweets and Cigars, Edward Dash, and/or Edwina Dash;
19. Lease, sublease, or purchase agreements completed by Edward Dash, Edwina Dash, and/or Big Ed's Sweets and Cigars;
20. Insurance records on any vehicles and/or premises;
21. Summary work papers or schedules;
22. Key(s) to storage facilities;
23. Financial statements including income statements and balance sheets as well as any supporting work papers or schedules;



24. Personnel documents including employment applications, employment agreements, time cards, payroll tax returns, forms 940 and 941, state documents including DE-3, W-2, and W-4 forms;
25. Escrow documents including escrow statements, grant deeds, and deeds of trust;
26. Business licenses, stocks, bonds, utility records, and other documents which show the identity of the owners or principals of Big Ed's Sweets and Cigars;
27. Tax records, correspondence, and tax returns for Edward Dash, Edwina Dash, and/or Big Ed's Sweets and Cigars;
28. Articles of incorporation, by-laws, or minutes of meetings of the members of the board or executive committees, officers, or partners in Big Ed's Sweets and Cigars, or any other related entities;
29. Business records reflecting purchases of inventory for resale; and
30. Cell and landline telephone statements and records.

The above records and documents (Items 1-30) are seizable regardless of the medium on which they are stored, including, but not limited to, paper, microfilm, videotape, audiotape and electronic data storage devices (e.g., computers, telephone answering machines, facsimile machines, pocket computers, electronic address and appointment books, telephone dialers, telephones, typewriters, watches, calculators, and pagers). The records and documents are also seizable even if not stored on the premises, so long as they can be accessed using equipment on the premises (e.g., e-mail and voice-mail). When the records and documents described above are an integral part of a file or other collection of records or documents, the entire collection of records and documents may be seized.

- B. In searching for data capable of being read, stored or interpreted by a computer, law enforcement personnel executing this search warrant will employ the following procedure:



1. Upon securing the premises, law enforcement personnel, and/or State Board of Equalization personnel, trained in searching and seizing computer data (the "computer forensic examiner") will make an initial review of any computer equipment and storage devices to determine whether these items can be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.
2. If the computer equipment and storage devices cannot be searched on-site in a reasonable amount of time, then the computer forensic examiner will determine whether it is practical to copy the data during the execution of the search in a reasonable amount of time without jeopardizing the ability to preserve the data.
3. If the computer forensic examiner determines it is not practical to perform an on-site search or make an on-site copy of the data within a reasonable amount of time, then the computer equipment and storage devices will be seized and transported to an appropriate location for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.
4. Any data that is encrypted and unreadable will not be returned unless law enforcement personnel, or State Board of Equalization personnel assisting them, have determined that the data is not (1) an instrumentality of the offense specified in the attached affidavit, (2) a fruit of the criminal activity, (3) contraband, (4) otherwise unlawfully possessed, or (5) evidence of the offense specified in the attached affidavit.
5. In searching the data, the computer forensic examiner may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In addition, the computer forensic examiner may search for and attempt to recover "deleted", "hidden", or

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encrypted data to determine whether the data falls within the list of items to be seized as set forth herein.

6. If the computer forensic examiner determines that the computer equipment and storage devices are no longer necessary to retrieve and preserve the data, these items will be returned within a reasonable period of time from the date of seizure.

C. In order to search for data that is capable of being read or interpreted by a computer, the following items may be seized and searched, subject to the procedures set forth above:

1. Any computer equipment and storage device capable of being used to commit, further, or store evidence of the offense described in the attached affidavit;
2. Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;
3. Any magnetic, electronic, or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
4. Any documentation, operating logs, and reference manuals regarding the operation of the computer equipment, storage devices, or software;
5. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
6. Any physical keys, encryption devices, dongles, and similar physical items that are necessary to gain access to the computer equipment, storage devices of data; and



7. Any passwords, password files, test keys, encryption codes, or other information necessary to access the computer equipment, storage devices or data.
8. Investigating officers and those agents acting under the direction of the investigating officers are authorized to access all computer data to determine if the data contains "property," "records," and "information" as described above. If necessary, investigating officers are authorized to employ the use of outside experts, acting under the directions of the investigating officers, to access and preserve computer data.

*[Insert a bank location after the description of property to be seized from non-bank locations, since the description of property to be seized will be different.]*

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**LOCATION #3 - 675 W. Second Ave., Monterey Park, California 95814**

The offices of the Monterey Park Bank located at 675 W. Second Avenue, in Monterey Park, California, and any other premises of Monterey Park Bank located in California:

**FOR THE FOLLOWING PROPERTY:**

For the period January 1, 1992, to the present, all records and documents pertaining to accounts:

526-88-9563

526-89-3341

and any other accounts or safe deposit rental agreements in the name of Edward Dash, Edwina Dash, or Ed's Sweets and Cigars, and any account or safe deposit rental agreement whose signatory is Edward Dash or Edwina Dash, regardless of whether the accounts or agreements are currently open or closed,

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5 and regardless of whether the accounts are savings, checking, loans, credit cards, or any other financial  
6 services. These records and documents include, but are not limited to:

- 7 1. Documents acquired or created during account opening or at any other time, including account  
8 applications, signature cards, articles of incorporation, corporate resolutions, fictitious business  
9 name statements, business or tax licenses, financial statements, credit reports, powers of  
10 attorney, deeds of trust, personal identification papers, and photographs;
- 11 2. Account activity records, including monthly statements and transcripts of account;
- 12 3. Fund transfer documents, including deposit and withdrawal slips, intrabank transfer records,  
13 credit and debit memorandas, wire transfer request and documentation, and receipts for  
14 automated teller, direct deposit, or other electronic transfers;
- 15 4. Checks and any other financial instruments deposited;
- 16 5. Checks drawn;
- 17 6. Checks and any other financial instruments drawn against the account or cashed by the account  
18 holder;
- 19 7. Financial instruments purchases using account funds or purchased by the account holder,  
20 including cashier's checks or other bank checks, money orders, and traveler's checks;
- 21 8. Correspondence pertaining to the account or to the account holder, both internal and third-party  
22 correspondence;
- 23 9. Currency transaction reports pertaining to the account or to the account holder;
- 24  
25





10. Credit documents, whether the account was granted, denied, repaid or outstanding, including applications, loan agreements, mortgage and other security agreements, credit card agreements, letters of credit, promissory notes, and lines of credit;

11. Checks or other financial instruments issued as loan proceeds;

12. Credit card transaction receipts;

13. Documents pertaining to safe deposit boxes, vaults, or other repositories in the name of the account holder, including applications, signature cards, and entry logs.

If the officer executing this search warrant gives the bank the opportunity to produce the records and documents as an alternative to the officer conducting the search and seizing the items himself or herself, and the bank agrees to this procedure, the bank shall produce the named records and documents within 10 days regardless of the branch where the accounts are based or the location of the records and documents.

*[Insert the following sentence if you have included a Request for Non-Notification and a Non-Notification Order for the magistrate's signature]*

You are further commanded that you shall inform the person upon whom this warrant is served that the financial institution shall not disclose the existence of this search warrant or the nature of the information provided pursuant to this search warrant to the holder of the account.



## **BRIEF ANALYSIS OF DIESEL FUEL TAX LAW**

Every person, firm, partnership, corporation or other entity, before becoming a supplier of diesel fuel in this state must first apply to the Board of Equalization for a license authorizing the person to engage in business as a supplier. The definition of a "supplier" includes any person or entity who is a blender, enterer, position holder, refiner, terminal operator or throughputter. It is unlawful for any person to become a supplier without first securing a license.

A diesel fuel tax of eighteen cents (\$0.18) is imposed on each gallon of diesel fuel upon its removal in this state from a terminal or importation into this state. Every supplier is required to prepare and file a return with the Board on a monthly basis showing the total number of gallons removed, sold, or imported by him or her within the state. This return must also show the amount of tax due for the month covered and include a remittance payable to the Board for the amount of tax due.

The diesel fuel tax is also imposed on the removal or sale of blended diesel fuel in this state by the blender thereof. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel. Any person that produces blended diesel fuel outside the bulk transfer/terminal system (the blender) shall pay the diesel fuel tax of eighteen cents (\$0.18) per gallon.



## **BRIEF ANALYSIS OF CIGARETTE AND TOBACCO PRODUCTS TAX LAW**

A cigarette and tobacco products tax is due on the distribution (sale) of untaxed cigarettes and tobacco products (Rev. & Tax. Code §30101, §30123 and §30131.2). Every person who desires to engage in the sale of cigarettes or tobacco products as a distributor must obtain a distributor's license from the BOE (Rev. & Tax. Code §30140). The excise tax is due when cigarettes and tobacco products are first distributed in this state to persons who do not hold valid distributor's licenses.

All untaxed tobacco products received in the state by a distributor and placed in retail stock are considered distributed and subject to excise tax (Rev. & Tax. Code §30008). The excise tax on cigarettes is paid by distributors through the use of stamps or meter impressions, which are affixed to packages of cigarettes prior to distribution (Rev. & Tax. Code §30161 and §30162). Distributors pay the excise tax on tobacco products by filing monthly returns with the BOE and remitting the tax due based on wholesale cost. The BOE sets the rate for each fiscal year (Rev. & Tax. Code §30181). The tax on tobacco products from [ ], to [ ], was [ ] of the wholesale cost. The tax on tobacco products increased dramatically on January 1, 1999. For the next six months, ending June 30, 1999,



the rate on tobacco products was 61.53%, from July 1, 1999, to June 30, 2000, the rate was 66.50%. From July 1, 2000 to June 30, 2001, the rate was 54.89%. On June 21, 2001, the BOE revised the tax rate and smokeless tobacco was taxed differently than smoking tobacco.

The tax rates for Fiscal Year 2001/02 effective July 1, 2001, were set as follows:

Smokeless tobacco Moist Snuff – If the wholesale cost is \$0.01 to \$1.69 per ounce, the rate is 248 % of the wholesale cost.

If the wholesale cost is \$1.70 and above per ounce, the rate is 131% of the wholesale cost.

Dry Snuff – The tax rate is 256% of the wholesale cost.

Chewing Tobacco – The tax rate is 490% of the wholesale cost.

All Other Tobacco Products (Including cigars, pipe tobacco, and fine cut)

The tax rate is 52.65% of the wholesale cost.

#### Court Decision

Effective September 10, 2001, in the case entitled *Core-Mark International, Inc., California Association of Retail Tobacconist and U.S. Smokeless Tobacco Company vs. State Board of Equalization*, a preliminary injunction was issued against the BOE applying the Fiscal Year 2001/02 tax rate established for moist snuff, dry snuff, and chewing tobacco. Accordingly, as of September 10, 2001, the tax rate for taxable distributions of all tobacco products is 52.65 percent of the wholesale cost. Currently, the rate for FY is .



Unless the contrary is established, it is presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed (Rev. & Tax. Code §30109). Intentional evasion of \$25,000 or more of the cigarette and tobacco products tax in a 12-consecutive-month period is a felony (Rev. & Tax. Code §30480).



## **BRIEF ANALYSIS OF SALES AND USE TAX LAW**

Every person, firm, partnership, corporation, or other entity engaged in the business of selling tangible personal property at retail and wholesale in California must obtain a seller's permit from the State Board of Equalization (BOE). A seller's permit allows the retailer or wholesaler to sell tangible personal property such as \_\_\_\_\_.

In general, sales tax is imposed upon the retailer for making retail sales of tangible personal property. In legitimate transactions, when the retailer makes a retail sale of tangible personal property to a customer, the sales price the customer pays includes the sales tax. The retailer reports the gross receipts from all its retail sales of tangible personal property on a BOE tax return, and the retailer pays the sales tax to the BOE based on its gross receipts. This occurs whether or not the retailer collected and charged sales tax to the customer.

A retailer is required to report both taxable and non-taxable sales on a BOE tax return, and may deduct exempt sales from the total sales to arrive at a taxable measure. Common exemptions include (1) sales to other retailers for the purpose of resale; (2) sales to customers not residing or doing business in California; (3) sales of food products for human consumption; and (4) sales to the United States Government. The retailer must be able to provide supporting and valid documentation for any exemption claimed.



For example, sales tax does not apply to sales of tangible personal property such as \_\_\_\_\_ when a retailer or a wholesaler with a seller's permit purchases tangible personal property for resale purposes from another wholesaler or retailer with a seller's permit. However, in such transactions, the seller must obtain a BOE-prescribed form from its customer. The form assists the seller in providing proof to the BOE that the tangible personal property was not sold at retail and therefore was not subject to sales tax.



## RELEVANT STATUTES

### California Revenue and Taxation Code Part 31. Division 2 (Diesel Fuel Tax Law)

§60707 – Felony Tax Evasion. Notwithstanding any other provision of this part, any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, or two, or three years, or both the fine and imprisonment in the discretion of the court.

§60707.1 – Felony Fine for Evasion. In addition to the fine or imprisonment, or both, each person convicted under Section 60707 shall pay, in the court's discretion, up to two dollars (\$2) for each gallon of diesel fuel, or portion thereof, knowingly removed, entered, blended, or delivered into a fuel tank, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for the purpose of sale, or actually sold, or offered for sale, or for the purpose of use, or actually used, or delivery into a fuel tank, or delivered into a fuel tank, or offered for delivery into





a fuel tank, in violation of Section 60707, as determined by the court. Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought. After reimbursing the prosecuting agency for its costs of prosecution, and after deducting the county's reasonable costs of administration, the remaining proceeds shall be distributed to the Motor Vehicle Fuel Account in the Transportation Tax Fund. Funds distributed pursuant to this section to the Motor Vehicle Fuel Account shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

**§60105 – Dyed Diesel Fuel Penalties.** (a) A penalty applies to any person who does any of the following:

- (1) Sells or holds for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.
- (2) Holds for use or uses dyed diesel fuel for a use other than a nontaxable use and that person knew, or had reason to know, that the diesel fuel was so dyed.
- (3) Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in any dyed diesel fuel.
- (4) Fails to provide or post the required notice with respect to any dyed diesel fuel. The failure to provide or post the required notice creates a presumption that the person so failing knows the diesel fuel will be used for a taxable use.



(b) The amount of the penalty for each violation specified in subdivision (a) is the greater of:

- (1) Ten dollars (\$10) for every gallon of diesel fuel involved, or
- (2) The product of one thousand dollars (\$1,000), and the total number of penalties, including the penalty currently being determined, imposed by this section on the person (or a related person or any predecessor of that person or related person).

(c) If a penalty is imposed under this section on any business entity, each officer, employee, or agent of the entity, who participated in any act giving rise to the penalty shall be jointly and severally liable with the entity for the penalty.

**§60701 – Penalty for Fraudulent Export Statement.** It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, through false statement, trick or device, or otherwise, to do any of the following:

- (a) Obtain diesel fuel for export and fail to export it, or cause it not to be exported.
- (b) Divert diesel fuel, or cause it to be diverted, from interstate or foreign transit begun in this state.
- (c) Return diesel fuel to this state and sell or use it, or cause it to be used or sold in this state, without complying with the provisions of this part and without notifying the supplier from whom the diesel fuel was originally purchased of that act.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 60706.



Each shipment illegally diverted or illegally returned constitutes a separate offense. The unit of each shipment is the cargo of one vessel, one railroad carload, one automobile truckload, one truck and trailer load, one drum, one case, or one can.

**§60702 – Conspiracy.** It is unlawful for any supplier or other person to conspire with any person, firm, association, or corporation, or any officer or agent thereof, to withhold diesel fuel from export, or to divert it from interstate or foreign transit begun in this state, or to return it to this state for sale or use so as to avoid any of the taxes imposed by this part. Each shipment illegally diverted or illegally returned constitutes a separate offense. The unit of each shipment is the cargo of one vessel, one railroad car load, one automobile truck load, one truck and trailer load, one drum, one barrel, one case, or one can. Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 60706.

**§60703 – Imported Fuel.** Any person who acquires diesel fuel outside this state and uses the diesel fuel for the operation of a qualified motor vehicle within and without this state or the United States, is guilty of a misdemeanor punishable as provided in Section 60706 unless that person is an interstate user who holds a valid diesel fuel tax license or diesel fuel trip permit as defined in Sections 60120 and 60122.



**§60704 – False or Fraudulent Refund Claim.** Any person who makes, issues or signs a false or fraudulent claim for refund under this part is guilty of a misdemeanor punishable as provided in Section 60706.

**§60705 – False or Fraudulent Return.** (a) Any person required to make, render, sign, or verify any return or report who makes any false or fraudulent return or report with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 60706. (b) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under this part, of a return, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document is guilty of a misdemeanor punishable as provided in Section 60706.

**§60706 – Any Violation of this Part.** Any violation of this part, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding six months, or by both fine and imprisonment in the discretion of the court.



**§60706.1 – Misdemeanor Fine.** In addition to the fine or imprisonment, or both, each person convicted under Section 60706 shall pay, in the court's discretion, up to two dollars (\$2) for each gallon of diesel fuel, or portion thereof, knowingly removed, entered, blended, or delivered into a fuel tank, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for sale, or actually sold, or offered for sale, or for the purpose of use, or actually used, or for the purpose of delivery into a fuel tank, or actually delivered into a fuel tank, or offered for delivery into a fuel tank, in violation of Section 60706, as determined by the court. Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought. After reimbursing the prosecuting agency for its costs of prosecution, and after deducting the county's reasonable costs of administration, the remaining proceeds shall be distributed to the Motor Vehicle Fuel Account in the Transportation Tax Fund. Funds distributed pursuant to this section to the Motor Vehicle Fuel Account shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

**§60708 – Limitation.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.



## RELEVANT STATUTES

### California Revenue and Taxation Code Part 13, Division 2 (Cigarette and Tobacco Products Tax)

**§30008. Distribution.** "Distribution" includes:

- (a) The sale of untaxed cigarettes or tobacco products in this state.
- (b) The use or consumption of untaxed cigarettes or tobacco products in this state.
- (c) The placing in this state of untaxed cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling the cigarettes or tobacco products to consumers.

**§30011. Distributor.** "Distributor" includes:

- (a) Every person who, after 4 o'clock a.m. on July 1, 1959, and within the meaning of the term "distribution" as defined in this chapter, distributes cigarettes.
- (b) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term "distribution" as defined in this chapter, distributes tobacco products.
- (c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state.

**§30101. Rate of tax.** Every distributor shall pay a tax upon his or her distributions of cigarettes at the rate of one and one-half mills (\$0.0015) for the distribution after 4:00 a.m. on July 1, 1959, of each cigarette until 12:01 a.m. on August 1, 1967, at the rate of three and one-half mills (\$0.0035) for the distribution of each cigarette on and after August 1, 1967, until 12:01 a.m. on October 1, 1967, at the rate of five mills (\$0.005) on and after 12:01 a.m. on October 1, 1967, until 12:01 a.m. on January 1, 1994, and at the rate of six mills (\$0.006) on and after 12:01 a.m. on January 1, 1994.



§30109. **Presumption of distribution.** Unless the contrary is established, it shall be presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed.

§30123. **Rate of tax; cigarettes; tobacco products.**

(a) In addition to the tax imposed upon the distribution of cigarettes by this chapter, there shall be imposed upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed.

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.



**§30131.2. Rate of tax; cigarettes; tobacco products.**

(a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and any other taxes in this chapter, there shall be imposed an additional surtax upon every distributor of cigarettes at the rate of twenty-five mills (\$0.025) for each cigarette distributed.

(b) In addition to the taxes imposed upon the distribution of tobacco products by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121), and any other taxes in this chapter, there shall be imposed an additional tax upon every distributor of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the rate of tax imposed on cigarettes by subdivision (a).

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

**§30140. Distributor's license.** Every person desiring to engage in the sale of cigarettes or tobacco products as a distributor (including a common carrier or authorized person mentioned in Section 30104), except a person who desires merely to sell or accept orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state, shall file with the board an application, in such





form as the board may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he or she engages in the business of distributing cigarettes or tobacco products.

**§30161. Tax payment by use of stamps and impression.** Except for the use or consumption of cigarettes by other than a licensed distributor, and as may be authorized under the provisions of Section 30165, the tax imposed by this part with respect to distributions of cigarettes shall be paid by distributors through the use of stamps or meter impressions. The board shall furnish stamps for sale and provide for the sale of meter register settings for metering machines approved by the board.

**§30162. Design; manner of affixing.**

(a) Stamps and meter impressions shall be of the designs, specifications and denominations as may be prescribed by the board. The board shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.

(b) This section shall remain in effect until January 1, 2005, and as of that date is repealed.

**§30181. Due date (in pertinent part).**

(a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101) or Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25<sup>th</sup> day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or



before the 25<sup>th</sup> day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. The return shall be filed with the board, in the manner elected by the distributor pursuant to subdivision (c), together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

**§30182. Report by licensed distributor.**

(a) Except as provided in subdivision (b), every distributor shall file, on or before the 25th day of each month, a report in the form as prescribed by the board, that may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Every distributor that elects, pursuant to Section 30168, to make deferred payments on a twice-monthly basis shall file a report in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of cigarettes and purchases of stamps and meter register units during the month following the month in which the distribution occurred and the stamps and meter register settings were purchased, and any other information as the board may require to carry out this part. The monthly report shall be filed on or before the 5th day of the month



with respect to those distributions of cigarettes and purchases of stamps and meter register settings that were made during the preceding month.

(c) Reports shall be authenticated in a form, or pursuant to, methods as may be prescribed by the board.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

**§30184. Remittance of tax.** The distributor shall submit with each report or return a remittance payable to the board for the amount of tax due.

**§30471. Criminal penalties.** Any person who fails or refuses to file any report required to be made, or who fails or refuses to furnish a supplemental report or other data required by the board, or who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine of not exceeding one thousand dollars (\$1,000) for each offense.

**§30472. Criminal penalties.** Any person required to make, render, sign, or verify any report who makes any false or fraudulent report with intent to defeat or evade the determination required by law to be made is guilty of a misdemeanor. He shall for each offense be fined not less than three hundred dollars (\$300) and not more than five thousand dollars (\$5,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the court.

**§30480. Felony offense.** Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than five thousand dollars



(\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, two years, or three years, or by both the fine and imprisonment in the discretion of the court.

### Related Criminal Provisions

#### **Penal Code §487. Grand theft defined (in pertinent part).**

Grand theft is theft committed in any of the following cases:

- (a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), except as provided in subdivision (b).

#### **Penal Code §1524. Issuance; grounds; special master**

- (a) A search warrant may be issued upon any of the following grounds: (1) When the property was stolen or embezzled. (2) When the property or things were used as the means of committing a felony. (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered. (4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony. (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring. (6) When there is a warrant to arrest a person. (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public



offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with: (1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant. (2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing. At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time. If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2



(commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings. (3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court. In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of



the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

**Penal Code §1530. Service by officers; persons aiding officers.** A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no



other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

**Penal Code §12022.6. Taking damaging or destruction of property; commissions of felony; additional punishment (in pertinent part).**

(a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

(4) If the loss exceeds two million five hundred thousand dollars (\$2,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

### **Board of Equalization's Authority to Examine Records**

**§30454. Examination of records; supplemental reports.** The board or its authorized representative may make such examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and such other investigations as it may deem necessary in carrying out the provisions of this part.

In addition to any other reports required under this part, the board may, by rule or otherwise, require additional, other, or supplemental reports from licensed distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons, including reports of shipments of cigarettes or tobacco products from a point outside this state to a point within this state, and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports.





Government Code §15618. The board may examine, as a board, individually, or through its staff, the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report.



## RELEVANT STATUTE

### California Revenue and Taxation Code Part 1, Division 2 ( Sales and Use Taxes)

§6066. Application for permit. (a) Every person desiring to engage in or conduct business as a seller within this state shall file with the board an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of the business, and such other information as the board may require. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the board. The application shall state that the applicant will actively engage in or conduct business as a seller of tangible personal property.

(b) An application filed pursuant to this section may be filed using electronic media as prescribed by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disks, facsimile machine, or telephone.



§6071. Unlawful acts. A person who engages in business as a seller in this state without a permit or permits or after a permit has been suspended or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor punishable as provided in Section 7153.

§6094.5 Improper use of certificate. Except as provided in Sections 6012.8 and 6012.9:

(a) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor punishable as provided in Section 7153.

(b) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. In addition to the tax, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars (\$500) whichever is greater, for each purchase made for personal gain or to evade the payment of taxes.



§7152. Criminal penalties. (a) Any person required to make, render, sign, or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 7153.

(b) Any person who willfully aids or assists in, or procures, counsels, or advises in, the preparation or presentation, in connection with any matter arising under this part, of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a misdemeanor punishable as provided in Section 7153.

§7153. Same. Any violation of this part by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment in the discretion of the court.

§7153.5. Same. Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the reporting, assessment, or payment of a tax or an amount due required by law to be made is guilty of a felony when the amount of unreported tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any



12-consecutive-month period. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

**SEARCH WARRANTS**  
**APPENDICES B-K**

For more detailed information applicable to each team, please refer to the appropriate appendices.

<u><b>Team Designations</b></u>	<u><b>Appendix</b></u>
<u><b>Command Center Team</b></u>	<u><b>B</b></u>
<u><b>ID Lead Investigator</b></u>	<u><b>C</b></u>
<u><b>Mapper</b></u>	<u><b>D</b></u>
<u><b>Camera Person</b></u>	<u><b>E</b></u>
<u><b>Searcher</b></u>	<u><b>F</b></u>
<u><b>Finder</b></u>	<u><b>G</b></u>
<u><b>Interviewer/Interpreter/Witness</b></u>	<u><b>H</b></u>
<u><b>Recorder</b></u>	<u><b>I</b></u>
<u><b>Computer Forensics Specialist</b></u>	<u><b>J</b></u>
<u><b>General List</b></u>	<u><b>K</b></u>

## SEARCH WARRANTS

### APPENDIX B

#### **COMMAND CENTER TEAM**

*When there are multiple search locations, a command center may be set up either at an off-site location or at one of the search locations. The command center team may consist of BOE management, legal personnel, law enforcement or other specialized personnel. The command center team will coordinate and assist the various search teams with major issues that may arise such as safety, staffing, legal implications, equipment, etc.*

#### **Duties and Responsibilities of Command Team or Lead Supervisor:**

1. Prior to the briefing, the ID lead investigator, ID management, and the lead peace officer will determine the best possible site for a command center, if necessary.
  - 1.1 When there are multiple search locations, the command center team will oversee the entire operation. All questions by the ID lead investigator regarding the search warrant are to go through the command center team or lead supervisor. The command center team or lead supervisor will provide the necessary guidance to the lead investigator.
2. Have knowledge of or access to the following items:
  - 2.1 Copy of signed search warrant and affidavit.
  - 2.2 Copy of the breakdown of search teams, team locations, and individual titles.
  - 2.3 Copy of each individual participant's duties and locations during the search.
  - 2.4 Copy of a list of telephone numbers and pager numbers of each person involved, including management/legal staff that may need to be contacted.
  - 2.5 Copy of the BOE telephone directory.
  - 2.6 Copies of the local telephone directories.
  - 2.7 Copy of emergency telephone numbers and addresses of the nearest hospitals.
  - 2.8 Photographs of all subjects of the search or likely subjects of the search.
  - 2.9 Copy of criminal histories of subject of the search. (This information is typically not shared with other Board staff or ID staff not involved with the case.)
  - 2.10 Listing of all known vehicles associated with subject of the search and their owners.
  - 2.11 Listing of all known weapons or suspected weapons at search site. (This information typically will not be shared with Board staff.)
  - 2.12 Copy of the map to each search warrant location, staging area, and nearest hospital.
  - 2.13 Copy of map, photograph, or drawing of house, yard, garage, neighbors, apartment/office complex, etc.
  - 2.14 Note the date range of items to be seized. This question always comes up at the actual search scene.
3. Attend the briefing with all search warrant team members and peace officers.
4. Serve as liaison between different search teams prior to and during the search, and insure that available equipment, staffing, and assistance is provided, as necessary.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX B

5. Coordinate simultaneous entries for multiple locations.
6. Establish contact with lead investigators after entering search area and at regular pre-arranged intervals.
7. Assume different roles and assist the search teams as necessary.
8. Track staff hours.
9. Release staff when tasks are completed and transportation is available.
10. Coordinate, along with the ID lead investigator(s) and the peace officers, to determine how and when seized evidence will be picked up and transported.



## SEARCH WARRANTS

### APPENDIX B

#### **COMMAND CENTER TEAM**

#### **REQUIRED EQUIPMENT/SUPPLY LIST**

- Cellular telephone and pager
- List of all search team members and their telephone numbers
- Telephone numbers for the Board's management, the Legal Department, and Board's media relations office
- Telephone numbers for District Attorney, peace officers, Board members, and local police departments
- Search Warrant briefing kit
- One copy of search warrant
- BOE-883, *Consent to Search* forms (for areas not covered by warrant)
- Street map of the surrounding area
- A BOE telephone directory
- Supply of returns and/or forms

#### **Other:**

- A site location for command center
- Plan of action in case of an emergency

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX C

#### **ID LEAD INVESTIGATOR**

##### **Duties and Responsibilities of the Lead Investigator:**

1. The lead investigator is normally the one who prepared the search warrant. In preparing for the search, the lead investigator will work with BOE management and the case peace officer in developing a search plan.
2. The lead investigator will recommend to management the teams and personnel or staff he/she will need to conduct the search.
3. The lead investigator will prepare search warrant packets for each member of the search warrant team, which will consist of at least the following items:
  - 3.1 Copy of Attachment A and affidavit.
  - 3.2 Copy of a breakdown of the search teams and their individual titles.
  - 3.3 Copy of individual participant's duties during the search.
  - 3.4 Photographs of all suspects or likely suspects.
  - 3.5 Listing of all known vehicles and their owners.
  - 3.6 Special note of time period involved for items to be seized. This question always comes up at the actual search scene.
  - 3.7 Copy of the map to each location and staging area.

For personal residence searches, the ID search team should be reminded to be respectful and be aware that there may be children at the location.
4. Coordinate the specific assignments of each team member regarding his or her assigned tasks as well as breaks and lunches.
5. Prepare for and conduct a "special briefing" for the interviewers and witnesses covering all extraneous details, including a thorough discussion of all safety issues and safety concerns. Provide the interviewers with a summary of the case to assist them with their interview of the suspects.
- ~~5.6.~~ Remain in constant contact with the command center and be aware of staffing. Do not allow staff to stand around doing nothing at the search site. This is not only an inefficient use of resources but it looks bad. If staff is not needed at the site and the command center indicates resources are not needed elsewhere, staff should be released.
- ~~6.7.~~ Collect all videotapes and still photographs from the camera person.
- ~~7.8.~~ The Board Scene Leader should leave a copy of the warrant and the inventory at the site. The copy of the warrant left at the location shall never include the affidavit/statement of probable cause.

## SEARCH WARRANTS

### APPENDIX C

#### **ID LEAD INVESTIGATOR**

#### **EQUIPMENT/SUPPLY LIST**

##### **Search Warrant Kits**

- Cargo van or truck for transportation of evidence
- Locks
- Heavy duty dolly and/or hand truck
- Tie down straps and/or cords
- Cellular telephone and pager
- List of all search team members and their telephone numbers
- Telephone numbers for the Board's management, the Legal Department, and public relations office
- Telephone numbers for District Attorney and Peace Officers
- Search Warrant briefing kit with file copy of search warrant
- At least two copies of the search warrant per site (one copy minus the affidavit to be left at each site, one complete copy for the serving officer)
- BOE-883, *Consent to Search*, forms (areas not covered by warrant)
- Street map of the surrounding area
- Raid jacket
- Storage cartons
- File boxes
- Large and small manila envelopes
- Expand files
- Latex bands and plastic twist ties
- Post-it notes, assorted sizes
- Paper clips, large and small
- Binder clips, assorted sizes
- Marking pens (felt tip, assorted colors)
- Ink pens (ballpoint) and pencils
- Latex gloves (three pairs per team member)
- Masking tape
- Packing tape
- Scissors/razor/knife
- Stapler with extra staples
- 3 tablets, extra note pads
- Flashlight
- First aid kit (Band-Aids, Tylenol, nasal decongestant, tweezers, disinfectant)
- Filter breathing masks (optional - for attic/crawl space, dusty areas, etc.)
- Cleaning rags/towels/moist towelettes (optional )
- Tools (hammer, screwdrivers (Phillips and regular), crescent wrench, pliers)
- Business cards
- State ID
- Tablet of paper (8 1/2" X 11")
- ID clothing

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX D

#### **MAPPER**

##### **Duties and Responsibilities of the Mapper:**

1. Attend the briefing.
2. Review any available floor plans or photographs.
3. Prepare preliminary room identification signs.
  - 3.1 Suggested size for sign is 8 1/2 x 11 paper sheet.
  - 3.2 Label each room and object for identification purposes.
    - 3.2.1 Identify room by number (business office: Room 1, storage room: Room 2, etc.).
    - 3.2.2 Identify objects or walls in each room by letter (A: Desk; B: File Cabinet; C: Table, etc.).
  - 3.3 Use signs with preprinted large, dark and noticeable numbers.
4. The mapper will enter the premises after it is secure, with the lead investigator and camera person and conduct an initial walk-through.
5. Assist the lead investigator assess the search location on the following:
  - 5.1 Areas where records to be seized are stored.
  - 5.2 The type and possible amount of records to be seized.
  - 5.3 At the direction of the lead investigator, physically label each room/area with pre-made identification signs.
  - 5.4 Label each object or wall in the room (A, B, C, etc.).
  - 5.5 Assume the additional role assigned when the lead investigator instructs to do so.

## SEARCH WARRANTS

### APPENDIX D

#### **MAPPER**

##### **EQUIPMENT/SUPPLY LIST**

- Large felt-tip ink pen for room signs
- Room and wall signs (prepared prior to search warrant execution)
- Normal felt-tip ink pen for map
- Ballpoint ink pen and pencil
- Tablet of paper (8 1/2" X 11")
- Scotch or masking tape
- ID clothing

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX E

#### **CAMERA PERSON**

##### **Duties and Responsibilities of the Camera person:**

1. Attend the briefing.
2. Obtain a camcorder and a digital camera. Become familiar with how the equipment works and verify camcorder is working and that the battery and any backup batteries are charged before leaving the office.
  - 2.1 Insure there is an adequate supply of video cassettes and film. If using a camera, a minimum of eight pictures per room will be required.
  - 2.2 Insure there is an adequate supply of flash equipment and charged batteries for all equipment to be used.
3. Follow the lead investigator's and peace officer's instruction at all times.
4. A peace officer must secure the search location. Do not attempt to enter the search location until properly instructed to do so.
5. Follow the lead investigator and mapper as they assess the rooms to be searched.
6. Report any suspicious items, such as guns, drugs, or other dangerous, unusual items to the peace officer and lead investigator as soon as possible.
7. Do not touch or handle any computer hardware or software. If a computer is found, notify your lead investigator as soon as possible.
8. After the peace officer secures the premises, the camera person will enter first with the lead investigator and mapper and will begin taking "before pictures" as follows:
  - 8.1 Starting in the corner to the left of the door entry, videotape and/or take one photograph of the opposite corner of the room; i.e.; northeast corner looking to the southwest corner. The cameraperson should continue videotaping and/or taking photographs from each corner of the room.
  - 8.2 Be sure to properly label each videocassette and the back of each photograph with the room identification and the direction of each photo. The date and time should be noted, along with the cameraperson's initials.
  - 8.3 Upon completion of the "before pictures," report back to the lead investigator for further instructions. There may be special reasons to videotape and/or take photographs of desks, file cabinets, safes, etc.
9. Assume other roles, as necessary, after the initial videotape and/or photographs have been taken, and the lead investigator has given his/her instructions to do so.
10. At the conclusion of the search, the camera person will videotape and/or take a series of "after pictures" of each room, in the same manner as the "before videotaping" and/or pictures, and include proper labeling.
11. Give the video cassette and all pictures and exposed film to the lead investigator as soon as practical. Normally, it is better for the camera person to retain the video cassette and photos until he/she returns to the office.

## SEARCH WARRANTS

### APPENDIX E

#### CAMERA PERSON

##### EQUIPMENT/SUPPLY LIST

- Camcorder with fresh batteries
- Additional batteries
- Blank videocassettes (minimum of three)
- Digital camera with flash (batteries usually in the film pack - check to be sure)
- Film for "before pictures" (four per room, plus exterior shots)
- Film for "after pictures" (four per room, plus exterior shots)
- Additional film to photograph objects/subjects as needed
- Working back-up camera with flash capability
- Adequate film for back-up camera, if different from primary camera
- Fresh batteries for back-up camera, if different from primary camera
- Black, permanent ink marker (Sharpie recommended)
- Pencil/pen
- Paper tablet
- Large sealable envelope to hold photos taken
- Small trash bag for expired film cartons (optional)
- ID clothing

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## APPENDIX F

### SEARCHER

#### Duties and Responsibilities of Searcher:

1. Attend the briefing.
2. Read the search warrant. Know the items to be seized and those which fall within the scope of the search warrant, i.e., tax years covered, beginning and ending dates, names of all individuals and businesses, etc.
3. For your safety, follow your lead investigator's and peace officer's instruction at all times.
4. A peace officer must secure the search location. Do not attempt to enter the search location until properly instructed.
5. Once entry is approved, the lead investigator will assign the searchers to specific rooms to be searched.
6. Locate, identify, and gather those items falling within the scope of the search warrant.
7. The finder or lead investigator will make the final determination as to whether or not an item is actually a questionable item to be seized.
8. Report any suspicious items, such as guns, drugs, or other dangerous or unusual items to the peace officer and lead investigator as soon as possible.
9. Do not touch or handle any computer hardware or software. If a computer is found, notify your lead investigator as soon as possible.
10. Make a systematic search of the room, insuring that all objects are searched, which could contain items falling within the scope of the warrant. The following procedure should be used during the search:
  - 10.1 When a seizable item is located, place the item in a plastic bag or envelope and place a label on the plastic bag or envelope. If there is doubt as to whether the item should be seized, flag the item and let the scene lead know.
  - 10.2 When there are enough items, seal the plastic bag or envelope and fill-in the label on the exterior of the plastic bag or envelop with the requested information.
  - 10.3 If there is a question by the Searcher as to whether an item should be seized, the scene lead should be consulted and will make the final decision whether to seize the item or not.
11. All areas/rooms and containers/objects that have been searched should have a Post-it note indicating "Done" and the searcher's initials affixed to it. A searcher should complete the room or area started before starting a search of a different room or area. If an area/room or container/object is lacking a tag, assume it has not been searched and search it.
12. Upon completing the search of an assigned area/room or container/object, the searcher will report to the lead investigator and wait outside for further instructions.



## SEARCH WARRANTS

### APPENDIX F

#### SEARCHER

#### EQUIPMENT/SUPPLY LIST

- Tablet of paper
- Ink pen and pencil
- Four pads (50 sheets each) Post-it notes - - small and medium size
- Latex gloves
- Flashlight
- Knife or box cutter
- ID clothing

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX G

#### **FINDER**

~~This function is probably one of the most important. The team member operating in this capacity will be the one most likely to testify later in court as to many things such as the recovery, packaging, and marking of all seized items or the thinking process used in deciding whether to seize or not to seize an item. Normally, there will be only one finder per search location.~~

#### **Duties and Responsibilities of the Finder:**

1. ~~Attend the briefing.~~
  - 1.1 ~~Review the search warrant. Know those items to be seized and those which fall within the scope of the search warrant, i.e., tax years covered beginning and ending dates, names of all individuals and businesses, etc.~~
2. ~~For your safety, follow your lead investigator's and peace officer's instruction at all times.~~
3. ~~A peace officer must secure the search location. Do not attempt to enter the search location until instructed to do so.~~
4. ~~Once entry is approved, the finder will be instructed by the lead investigator to work in a particular area.~~
5. ~~Report any suspicious items, such as guns, drugs, or other dangerous, unusual items to the peace officer and lead investigator as soon as possible.~~
6. ~~Do not touch or handle any computer hardware or software. If a computer is found, notify your lead investigator as soon as possible.~~
7. ~~Examine all items flagged by the searchers for relevancy to the search warrant.~~
8. ~~Determine if the item(s) should be seized. If there is any question, the finder should consult with the lead investigator.~~
9. ~~Place the item(s) to be seized in an appropriate package; i.e., large manila envelope, cardboard box, etc.~~
10. ~~Insure that the information written on the label by the searcher is accurate and legible.~~
11. ~~Take the evidence to the recorder to be entered into the inventory record.~~
12. ~~Place a Post it note on the room identification sign after the room has been searched and all seizable items have been removed.~~
13. ~~Go from room to room until the search is completed.~~

## SEARCH WARRANTS

### APPENDIX G

#### **FINDER**

#### **EQUIPMENT/SUPPLY LIST**

- ° ~~Copy of search warrant~~
- ° ~~Pen and pencil~~
- ° ~~Paper tablet~~
- ° ~~Post it notes~~
- ° ~~Latex gloves~~
- ° ~~Flashlight~~
- ° ~~Knife or box cutter~~
- ° ~~ID clothing~~

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX H

#### **INTERVIEWER/INTERPRETER/WITNESS**

##### **Duties and Responsibilities of the Interviewer/Interpreter/Witness**

1. Attend briefing.
2. Attend the “special briefing” which follows the regular briefing.
3. Review the search warrant and affidavit, along with the entire case in general.
4. Review the list of questions submitted by the lead investigator to be used in the interview.
5. Follow your lead investigator’s and peace officer’s instruction at all times.
6. After the peace officer has secured the premises and isolated the suspects, it will be the interviewer’s responsibility, along with his/her witness (and interpreter if needed), to approach the suspect(s) and attempt to interview.
  - 6.1 The interviewer should avoid all discussion of the search warrant with suspect(s), and attempt to move directly into the interview process.
  - 6.2 The interviewer should follow normal interviewing procedures. Notify the person being interviewed that the interview will be tape recorded.
  - 6.3 If during the interview the suspect(s) wants to take you to another location of the premises in order to discuss something further i.e., their books and records, the interviewer should advise the lead investigator of this desire so appropriate precautions can be taken.
7. After concluding the interview, the interviewer should report to the lead investigator and share the pertinent details from the interview, particularly any information that would have a bearing on the search being conducted. The interviewer should then assume other roles, where needed.
8. Complete a BOE-878, *Memorandum of Interview/Contact*, after the search has been concluded.

## SEARCH WARRANTS

### APPENDIX H

#### **INTERVIEWER/INTERPRETER/WITNESS**

#### **EQUIPMENT/SUPPLY LIST**

- Interview outline
- Copy of Search Warrant and Affidavit
- Notes from "special briefing" with lead investigator
- Items of evidence needed for interview
- Mug shots of suspects
- Tape recorder
- Extra tapes for long interviews (at least three blank 90 minute tapes)
- Fresh batteries for tape recorder
- Authorization to Release Information forms
- Ink pen and pencil
- Paper tablet
- Business cards (discuss with lead investigator)
- ID clothing (discuss with lead investigator)

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## APPENDIX I

### RECORDER

#### **Duties and Responsibilities of Recorder:**

1. Attend the briefing.
  - 1.1 Review the search warrant, with an emphasis on items to be seized and the scope of the search warrant; i.e., years covered, beginning and ending dates, names of all individuals and businesses, etc.
2. After the peace officers secure the premises, and at the direction of the lead investigator, the recorder will enter the premises and begin setting up the computer equipment in a specified location. This area should allow ample room, as this will be the central gathering point for all evidence to be seized.
3. The recorder will begin listing the evidence brought to him/her by the searchers.
4. It will be the responsibility of the recorder to verify that a label has been placed on each item and the item has been stored in an appropriate box.
5. After an inventory listing has been prepared, the lead investigator, should insure all items seized have been listed, BOE-881 (inventory listing).
6. The recorder will make three copies of the inventory listing of all items seized and give all three copies to the lead investigator.
7. The recorder must insert the evidence in manila envelopes or into a box.
  - 8.1 The recorder maintain chain of custody.
  - 8.2 The recorder, or his/her designee, must transfer the evidence to the custodian of records.
8. The minimum data to be printed on each envelope or item label consists of (use ID web site for standard labels):
  - 8.1 Location (room designation number).
  - 8.2 Name of searcher.
  - 8.3 Evidence description.
  - 8.4 Exact whereabouts; e.g., desk, cabinet, etc..
9. The recorder must securely tape the box of evidence closed and label the box properly in a numerical sequence that corresponds to the inventory sheet.

## SEARCH WARRANTS

### APPENDIX I

#### 11. Do's and Don'ts:

- 11.1 Do write legibly when computer is not used to create labels or lists.
- 11.2 Do only take items that are listed on the priority list and/or search warrant.
- 11.3 Do keep close track of all evidence.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX I

#### **RECORDER**

#### **EQUIPMENT/SUPPLY LIST**

- Pencil and pens
- Markers
- Scissors
- Scotch or masking tape
- ID clothing
- Search warrant kit
- Inventory sheet/receipt, BOE-881 to be provided by the evidence custodian
- Cigarette and tobacco products inventory sheets
- Evidence boxes
- Evidence bags
- Clipboard
- Manila envelopes
- Post-its
- Minimum of 25 blank inventory sheets, BOE-881.



## SEARCH WARRANTS

### APPENDIX J

#### **COMPUTER FORENSICS SPECIALIST**

##### **Duties and Responsibilities of the Computer Specialist:**

1. Attend the briefing.
2. Computer specialist should have knowledge of the computers known to be located at the site prior to the date of the search.
3. Review search warrant to know what items, entities and time periods are included in the search.
4. During briefing, inform entry team to be aware of computers and have any persons near them move away.
  - 4.1 **Have interviewer ask for passwords and user names as part of interview.**
  - 4.2 The search location must be secured by a peace officer. Do not attempt to enter the search location until properly instructed.
5. After the location is secured, and when authorized by the lead investigator, enter search sites and note where all computers are and take photos (monitors, screen, behind, area, etc.).
6. Conduct the search and/or seizure of all computers and related equipment.
7. Secure each system (disconnect from the Internet, network, etc.)
8. Map the area immediately around the computer, identifying all manuals, cables and peripheral equipment. If possible, diagram any networks.
9. **MAKE DETAILED NOTES** (handwritten or recorded).
10. If time permits, preview each system.
11. Discuss with the lead investigator the preview results (if any) and determine plan of action of each system (image, size, or do nothing).
12. If system is to be imaged:
  - 12.1 Remove the hard drive and image in a forensic computer, or boot system with a forensic bootable floppy disc/CD.
  - 12.2 Use Encase, Safeback, or other tested imaging software to image the hard drive to another hard drive or other prepared media.
  - 12.3 If time permits, the image should be verified after it is made.
  - 12.4 Form ID-010 should be prepared for each system imaged and date and time stamps should be obtained. Also, the ID-009 should be prepared for each hard drive imaged.
13. If seizure is preferred:
  - 13.1 Photograph system, front and back.
  - 13.2 Label all cables and ports.

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### APPENDIX J

- 13.3 Detach cables.
- 13.4 Take all parts (monitor, CPU, keyboard, mouse, printer, etc.).
- 14. Search the area and seize any manuals, diskettes, hard drives, notes, software, CDs (music and movie CDs, stamped by the manufacturer, need not be seized) and other media. Magnetic media should be placed in paper bags or envelopes. Do not use plastic evidence bags.
- 15. Obtain an ID on the person(s) who operate the computer, so BOE can seek to obtain any possible passwords, etc.

## SEARCH WARRANTS

### APPENDIX J

#### COMPUTER SPECIALIST

##### EQUIPMENT/SUPPLY LIST

- Computer tool kit
- Latex gloves
- Hammer or nail puller
- Magnetic compass
- 5 1/4" floppy diskettes (with DOS only, no other files)
- 3 1/2" floppy diskettes (with DOS only, no other files)
- Paper tablet (to sketch computer setup at the site, and take notes)
- Ballpoint ink pen and pencil
- Felt tip pens (minimum of two colors)
- Black permanent, indelible ink pen (Sharpie recommended)
- White permanent, indelible ink pen (marker for black surfaces)
- Masking tape to identify cable ends and computer ports
- Self-adhesive file folder labels (minimum of two colors)
- Post-it notes
- Large storage boxes for transportation of computer equipment
- Latex bands and plastic twist ties
- Medium sized envelopes (to store software)
- Small scissors
- Small diagonal cutters
- Paper bags (do NOT use plastic bags, due to static electricity)
- Audio tape recorder (optional - for detailed notes of computer set-up)
- Audio tapes (optional - see above)
- ID clothing
- Laptop with all forensic programs
- Other peripheral equipment as desired (DAT drive, Jaz drive, zip drive, etc.) and their related media
- All programs needed
- Note pad
- Digital camera
- ID-009 and ID-010

**APPENDIX K**

**GENERAL EQUIPMENT AND SUPPLIES NEEDED FOR THE SEARCH**

**Equipment:**

- Cell telephones
- Camcorders
- Tape Recorders
- Digital Cameras
- Dolly
- Truck for Evidence Transportation
- 35mm cameras (use disposable camera if there are not enough ID camera
- Charged Camcorder Batteries/cell telephone batteries
- ID Clothing

**Supplies:**

- Evidence Boxes
- Evidence Bags
- Evidence Seal Tape
- Envelopes
- Markers
- Pens and pencils
- Room and wall identification sheets
- Box and item tags
- Inventory sheets
- Consent to Search forms
- Post-its
- Property Receipts
- Notepads
- Clipboards
- 35 mm file
- Tape cassettes
- 8mm video cassettes
- 50' Extension Cord
- 40 gal Garbage Bags
- Staplers
- Paper Clips
- Latex bands
- Tacky Finger
- Latex Gloves
- Flashlights
- Box cutters
- Scissors
- Boxing tape
- Cigarette and tobacco products inventory sheets
- Property Receipt for Search Warrant, BOE-881

# **Investigations Division Policy and Procedures Manual**

## **Chapter Eight**

### **Evidence**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## EVIDENCE

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# EVIDENCE

## CHAPTER EIGHT

### EVIDENCE

800.000

#### Rules of Evidence

800.005

Evidence is defined in section 140 of the Evidence Code as testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. Evidence could be anything (cigarettes, tax stamps, equipment, records, money, contraband, tobacco products, etc.) that is seized, purchased, found, handed over, and/or provided, from whatever source, that may be used to establish that a crime was committed by a suspect. All evidence that is obtained, in whatever manner, must be identified, documented, and linked to the suspect in order to be a useful part of an investigation. In order for this to be accomplished, the investigator and Evidence Custodian (EC) must ensure that the Rules of Evidence are adhered to. The Rules of Evidence are listed in the California Peace Officers Legal Source Book (CPOLSB) Ch. 11. The CPOLSB is available for review through your supervisor or area administrator. It is imperative that each investigator collect and submit evidence in the proper manner. The chain of custody must be strictly adhered to and evidence secured at all times. A strict chain of custody must be maintained for future evidentiary value. Failure to do so may jeopardize a case.

“Chain of custody” is an expression usually applied to the preservation of evidence in its original condition by its successive custodians. Documents or other physical objects may be the instruments used to commit a crime and are generally admissible as such. However, a judge must be satisfied that the writing or other physical object is in the same condition as it was when the crime was committed.

During the ordinary course of business or during an investigation, the Investigations Division (ID) may seize records, as well as, purchase and/or seize other evidence. In addition, the ID will take control of evidence seized and transferred to the Board of Equalization (BOE) by other law enforcement agencies. The security and integrity of evidence is absolutely essential to the proper delivery of justice under our judicial system. Therefore, a reliable chain of custody must be established and maintained to document that the evidence seized is the same evidence introduced in court during a criminal prosecution and that the evidence has not been tampered with or changed in any manner while in the custody. ID staff must promptly identify and secure evidence through controlled accessibility to preserve all the evidence in its original condition.

### EVIDENCE & ADMINISTRATIVELY SEIZED PROPERTY HANDLING

805.000

The ID obtains physical custody of property in a variety of ways. These ways include but are not limited to: 1) administrative seizures; 2) undercover purchases; and 3) search warrant seizures. To ensure accountability and to maintain the chain of custody for all evidence, as well as administratively seized property, under custody and control the following guidelines must be followed.

#### ADMINISTRATIVELY SEIZED PROPERTY

810.000

The ID may seize cigarettes and tobacco products under Business and Professions Code (B&P) Section 22974.3, B&P 22978.2 or Revenue and Taxation Code (R&T) Section 30436. The seizures are an administrative action that falls in the realm of civil law. It is a preventative measure that is also used to obtain information about the supplier.

Once seized, the cigarettes or tobacco products are the property of BOE. The forms and notices issued to a seller or transporter can be used as evidence of knowledge and/or criminal intent should a criminal case evolve. The chain of custody will be documented in a log maintained by the EC. Administratively seized property will be secured in a locked area.

See the *Inspection Procedure* chapter of the Investigations Division’s Policy and Procedures Manual for a detailed explanation as to when and under what circumstances illegal cigarettes and tobacco products should be administratively seized.

#### TRANSFERRING ADMINISTRATIVELY SEIZED PROPERTY TO THE EVIDENCE CUSTODIAN

810.005

All cigarettes and tobacco products seized under B&P §22974.3, B&P §22978.2 or R&T §30436 must be transferred to the EC by the close of business on the first business day the investigator is back in the office. Should circumstances arise that prevent the immediate transfer of the property to the EC, the maximum amount of time the investigator can hold the property is two business days with the permission of his/her supervisor. Should this occur, the investigator will keep all such property locked in a secured area in his/her cubicle until he/she can transfer the

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### TRANSFERRING ADMINISTRATIVELY SEIZED PROPERTY TO THE EVIDENCE CUSTODIAN

(cont.) 810.005

evidence to the EC. While in the field, all administratively seized property should be placed in the locked trunk of the vehicle, out of view, when the vehicle is left unattended. Said property should not be left in the locked vehicle overnight unless the vehicle is stored in a secure locked garage.

Cigarettes and tobacco products that are seized must be placed in a clear plastic zipper bag, state records box, or kept in their original container. The property tag in the plastic bag must be clearly visible. The property tag affixed to the box or container must also be clearly visible. Each property tag will be completed showing the complaint number, type of violation, description of the property, name and address of the person from whom the property was seized, date and time of recovery, and who recovered the item.

When the seized property is submitted to the EC, the investigator will submit the original form ID-900, ID-Record: Buys and Administrative Seizures (Intranet), one copy of the BOE-1317, Receipt for Property Seized, a completed cigarette inventory form, and if necessary, an ID-016 A, B and/or C, *Compliance Inspection Report*.

~~In the presence of the investigator.~~ The EC will inventory the contents of each bag, box, or container. If a correction is required on the BOE-1317, an amended BOE-1317 must be prepared, along with a letter to the owner of the property seized explaining the correction that was made. The letter, as well as a copy of the amended BOE-1317, will be mailed to the mailing address of record. If cigarettes are being returned to the taxpayer (seized in error) the investigator must deliver the product being returned and obtain a signature acknowledging the return of the product. The EC will complete the "Acknowledgement" block on the BOE-1317 after inventorying the contents of all bags, boxes, and containers related to the seizure. The EC will make all necessary copies of the BOE-1317 giving a copy to the investigator and placing a copy in, or attaching one to, each bag, box, or container. The EC will maintain the original BOE-1317 in the log book "Investigations Division's Record of Buys and Administrative Seizures (ID log book)."

The EC will assign an inventory number to each administrative seizure and write the number on the top of each tag in the ID-900 log, the BOE-1317, and the ID-016. He or she will then record the date of transfer in the log. Both the investigator and the EC will initial beside the date as consignor and consignee respectively on the ID-900. The EC will secure the bags, boxes, or containers in the evidence storage facility.

### **DETAILED INVENTORY OF SEIZED CIGARETTES AND TOBACCO PRODUCTS**

**810.010**

The EC will prepare a detailed inventory for all criminal citations. To more easily identify the evidence, the citing investigator shall make a copy of the issued criminal citation and include it with the seizure package, which will be submitted to the EC. Once the detailed inventory is complete, the EC shall provide a copy of the detailed inventory to the investigator. The investigator will retain the detailed inventory for use in the adjudication the criminal citation as needed.

### **SEIZED PROPERTY FROM A SUSPENDED OR REVOKED CIGARETTE AND TOBACCO PRODUCTS LRQ ACCOUNT**

**810.015**

Products seized under Business and Professions Code Section 22980.2(c) are forfeited to the State. All seizures from a suspended or revoked cigarette and tobacco products LRQ account shall be documented on the BOE-881, *Property Receipt*.

Once the product is transferred to the EC, the EC shall sign the BOE-881 to verify that the inventory is accurate and shall take the inventory into custody. If the EC finds any discrepancy in inventoried amounts, the Area Administrator is to be notified. The Area Administrator or designee shall conduct an inquiry into the discrepancy and prepare a report of findings for the Chief. At the time the seized property is accepted by the EC, the EC shall be provided the canary copy of the BOE-881.

### **ASSIGNING INVENTORY NUMBERS TO ADMINISTRATIVELY SEIZED PROPERTY**

**810.020**

Inventory numbers will begin with the letter "A" followed by a dash, the last two digits of the year, a dash, the first three letters of the last name of the investigator, a dash, and a three-digit number which is the sequential number of seizures made by the investigator during the year. For instance, the fourth seizure of Investigator Jones during 1999 would be given the following inventory number: A-99-JON-04. In the event there are two or more investigators with the same last name or last names which are similarly spelled, the EC will assign a unique identifier to each investigator.



## **EVIDENCE**

### **WITHDRAWING ADMINISTRATIVELY SEIZED PROPERTY FROM STORAGE AREA**

**810.025**

All administratively seized property held in storage which is needed for photographing or other procedures must be checked out through the EC. Arrangements for the transfer of property are to be made with the EC at least one business day in advance. If the investigator requesting the property is not the lead investigator on the case, the EC will obtain the lead investigator's or the lead investigator's supervisor's authorization for the transfer. Upon approval, the EC will pull the property from storage and arrange the transfer.

In instances where administratively seized property needs to be tested, the investigator will complete a form BOE-882, Request for Off-Site Testing of Property, and submit the form to the EC for processing. The EC will make arrangements for the testing. Once the testing is complete and the property is back in the care of the EC, the EC will provide the investigator with the original test report.

If the transfer is for internal purposes, such as auditing, photocopying, or photographing, the EC will record the transfer date, purpose, and the inventory numbers in the ID log book. For each line item or inventory number listed, the EC and investigator will initial the log as consignor and consignee.

### **RETURNING ADMINISTRATIVELY SEIZED PROPERTY**

**810.030**

Section 30438 of the R&TC allows anyone with an interest in seized property to petition for its release or recovery.

The petition must be made within 20 days from the date that form BOE-1238 was served upon or mailed to the petitioner or within 20 days from the date the notice of seizure is published on the Board's web site. If the Board grants the petition and orders the release of property, a copy of the BOE-1317 shall be sent to the EC who will file it in the ID log book. Before releasing the seized property, the EC shall inventory the property identified in the order.

The property shall be released and the owner shall acknowledge receipt of the property by signing the BOE-1317. The EC will enter the release in the log and send a copy of the BOE-1317 to the investigator who made the seizure.

### **PURCHASED EVIDENCE**

**815.000**

Purchased evidence is used to establish and develop probable cause needed to obtain search warrants and to support prosecution of felony tax evasion in criminal court proceedings. The chain of custody must be documented on evidence tags and maintained by the EC in the ID log book. The ID makes undercover purchases, i.e. "buys" of items such as cigarettes from vendors who are suspected of evading taxes. Buys may be made as a result of ongoing investigations or tips and/or leads from industry, law enforcement, business competitors, and other informants.

### **TRANSFERRING PURCHASED EVIDENCE TO THE CUSTODIAN**

**815.005**

All undercover purchased evidence must be transferred to the EC by the close of business on the first business day the investigator is back in the office. Should circumstances arise that prevent the immediate transfer of the evidence to the EC, the maximum amount of time the investigator can hold the evidence is two business days with the permission of his/her supervisor. Should circumstances prevent the immediate transfer, the investigator will keep all such evidence locked in a secure area in his/her cubicle until he/she can transfer the evidence to the EC. While in the field, all undercover purchased evidence should be placed in the locked trunk of the vehicle, out of view, when the vehicle is left unattended. Said property should not be left in the locked vehicle overnight unless the vehicle is stored in a secure locked garage.

Purchased evidence must be placed in a clear plastic evidence zipper bag, state records box, or in its original container. The evidence tag in the plastic bag must be clearly visible. The evidence tag affixed to the box or container must also be clearly visible. The tag will show the case or complaint number, vendor's name, DBA and address, product description and cost, date of purchase, and the name of the investigator who made the purchase.

The investigator will complete a ID-900. When the purchased evidence is submitted to the EC, the investigator will submit the original form ID-900. Prior to transferring the evidence to the EC, the investigator should review and correct any discrepancies between the information on the evidence tags and the completed ID-900.

In the presence of the investigator, the EC will inventory the contents of each bag, box, or container. Both must initial next to each correction, if any, made to the ID-900. The EC will complete the "chain of evidence" portion of each evidence tag, assign an inventory number to each purchase, and write the number on the top of each evidence tag and in the log. The EC will then record the date of transfer in the log. Both the investigator and the EC will initial beside the date as consignor and consignee respectively. The EC will secure the bags, boxes, or containers in the evidence storage facility.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **ASSIGNING INVENTORY NUMBERS TO PURCHASED EVIDENCE**

**815.010**

Inventory numbers will begin with the last two digits of the year, a dash, the first three letters of the last name of the investigator, a dash, and a two-digit number which is the sequential number of undercover purchases seizures made by the investigator during the year. For instance, the fourth undercover purchase of Investigator Jones during 1999 would be given the following inventory number: 99-JON-04. In the event there are two or more investigators with the same last name or last names which are similarly spelled, the EC will assign a unique identifier to each investigator.

If the investigator is submitting evidence from multiple purchases, the inventory numbers will be assigned in the order of entries on the log sheet.

### **WITHDRAWING PURCHASED EVIDENCE FROM PROPERTY STORAGE**

**815.015**

All evidence needed for photographing, court hearings, and other procedures must be checked out through the EC. Arrangements for the transfer of evidence are to be made with the EC at least one business day in advance. If the investigator requesting the evidence is not the lead investigator on the case, the EC will obtain the lead investigator's or the lead investigator's supervisor's authorization. Upon confirmation, the EC will remove the evidence from storage and arrange the transfer.

In instances where undercover purchased evidence needs to be tested off-site, the investigator will complete the BOE-882, and submit the form to the EC. The EC will make arrangements for the testing. Once the testing is complete and the evidence is back in the care of the EC, the EC will provide the investigator with the original test report.

If the transfer is for internal purposes, such as auditing, photocopying, or photographing, the EC will record the transfer date, purpose, and the inventory numbers in the ID log for "Buys and Administrative Seizures". For each line item, or inventory number listed, the EC and the investigator will initial the log as consignor and consignee respectively.

### **RETURNING PURCHASED EVIDENCE TO THE CUSTODIAN**

**815.020**

The investigator is responsible for transferring the evidence to the EC. In the investigator's absence, it will become the responsibility of the investigator's supervisor to arrange for the return of the evidence. When the evidence is presented, the EC will inventory the contents of the bags, boxes, or containers and record the date of transfer, and inventory numbers in the ID log book. For each line item or inventory number listed, the investigator or the supervisor and the EC will initial the log as consignor and consignee. In addition, the transfer must also be documented on evidence tags.

### **EVIDENCE SEIZED BY SEARCH WARRANT**

**820.000**

The ID obtains search warrants through the judicial process and arranges for law enforcement to serve warrants and ensure the safety of ID staff during the service of a search warrant. Searches are conducted on persons, businesses, and personal properties of persons where staff has established probable cause of felony tax evasion. The evidence seized pursuant to the warrant is used to prove that the persons committed fraud, to determine the amounts by which the state was defrauded, and to support criminal court cases. The evidence seized pursuant to the warrant is the property of the courts. Chain of custody should be documented on both evidence tags and in a log maintained by the EC. Contraband product, for example, must be treated with strict evidentiary procedures, secured in a locked area,

and sealed with tamper-proof seals. ~~In addition, after the investigator has completed the examination of the original records and equipment, the original records and equipment must be sealed with tamper proof seals.~~

### **TRANSFERRING SEARCH WARRANT EVIDENCE TO THE EC**

**820.005**

All evidence seized during the execution of a search warrant must be transferred to the EC. To facilitate the transfer, the supervisor in charge of the search warrant will notify the EC of the planned date and time of seizure. After the evidence is secured at the site of the search, the supervisor will contact the EC with an estimated time of arrival of the evidence and the number of containers to be transferred. The EC will meet the investigator at the evidence room/warehouse at the designated time.

The investigator will provide the EC with a copy of each Return of Warrant with the BOE-881 attached. The EC will check and compare the evidence tags on the bags, boxes, or containers to the Return of Warrant and the BOE-881.

If the information on the tag is consistent with the Return of Warrant and BOE-881, the EC will accept the evidence by completing the "chain of evidence" portion on the evidence tag.

## EVIDENCE

### TRANSFERRING SEARCH WARRANT EVIDENCE TO THE EC

(cont.) **820.005**

If the information on the tag is inconsistent with the Return of Warrant and BOE-881, the EC will open the container and examine its contents. If the contents are consistent with the Return of Warrant and BOE-881, the investigator will create a new evidence tag and replace the old tag with the new one. The EC will then accept the evidence. If the contents are inconsistent with the Return of Warrant, the EC will not accept the container but will keep the container in a separate place in the evidence room/warehouse. The EC will immediately notify the supervisor and follow up with a written notice to the Chief of the Investigations Division no later than the close of business on the next working day. The evidence container will not be accepted into evidence until the EC receives a copy of the letter notifying the subject of the search warrant of the error.

### ASSIGNING INVENTORY NUMBERS TO SEARCH WARRANT EVIDENCE

**820.010**

Inventory numbers will begin with the word "Location" plus the location number followed by a dash, then the box number. For instance, the search warrant for location 1 has three boxes of evidence. This would be given the following inventory numbers: Location#1-1, Location#1-2 and Location#1-3.

### WITHDRAWING SEARCH WARRANT EVIDENCE FROM STORAGE AREA

**820.015**

All evidence seized pursuant to a search warrant that is needed for auditing, photographing, court hearings, and other procedures must be checked out through the EC. Arrangements for the transfer of evidence are to be made with the EC at least one business day in advance. If the auditor or investigator requesting the evidence is not the lead investigator on the case, the EC will obtain the lead investigator's or the lead investigator's supervisor's or auditor's supervisor's verbal authorization. Upon confirmation, the EC will arrange the transfer.

In instances where search warrant evidence needs to be tested, the investigator or auditor will complete a *Request for Property Examination*, BOE-882, and submit the form to the EC. The EC will make the arrangements for the testing. Once the testing is complete and the evidence is back into the care of the EC, the EC will provide the investigator or auditor with the original test report.

All transfers of evidence must be recorded in the ID log book. If the transfer is for internal purposes, such as auditing, photographing, or photocopying the EC will write the date, time, container number, and purpose of transfer in the ID log book. If the evidence is contraband product removed from a container, and not the whole container, the EC will also write a description of the brands, number of items, and weight (tobacco). If the transfer is for external purposes, such as a court proceeding, the "chain of custody" portion of the evidence tag must be completed. Both the EC and the individual obtaining custody must sign the log.

Investigators will ensure that all records and/or contraband products are returned to the boxes from which they came. Records and contraband may not be transferred from one box to another. The investigator may make copies of original records and take them from the Evidence Room. When the investigator is finished with the records and/or contraband, the EC will log them back into custody. When the audit is complete, the EC will enclose all contraband on pallets in plastic wrap.

Any investigator or auditor who checks out evidence is responsible for keeping the chain of custody intact. He/she must ensure that while the evidence is in his/her possession, the integrity of the chain of custody is maintained and the evidence is not tampered with in any way.

### RETURNING SEARCH WARRANT EVIDENCE TO THE CUSTODIAN

**820.020**

At least one business day in advance, the investigator who checked out the evidence will notify the EC that he/she is ready to return the evidence. The investigator returning the evidence must be the same person who checked it out. If the individual will be leaving state employment, serving on jury duty, going on vacation, or taking a leave of absence, he or she must return the evidence before doing so. An exception will be made for an employee who is absent due to extended unexpected illness. In this case, the supervisor will retrieve the evidence and return it.

When an investigator returns evidentiary property, the EC must log it into custody. Both the EC and the investigator must sign the log. The transfer must be documented on evidence tags and evidence bags if the "chain of evidence" was recorded on them upon checkout. Contraband products returned from testing must be re-counted, resealed in their bags, and placed back in their respective containers. The EC will seal the opened containers of contraband with new evidence tape and place new plastic wrap around the pallet.

Regarding computer systems, the EC needs to check with the Computer Forensic Expert to ensure that the system is ready to return the evidence.

## **INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL**

### **RETURNING SEARCH WARRANT EVIDENCE TO THE OWNER**

**820.025**

It is important to note that all evidence seized pursuant to a search warrant is property of the court and is held by ID for the court. Upon the adjudication of a case, all evidence must be held for a minimum of six months. This six-month period relates to the time period in which the suspect may file an appeal. To release search warrant evidence prior to six months would require a waiver from the court.

Once the six-month waiting period has passed, the investigator should contact the suspect and determine the desired disposition of the property. Generally, the property will either be returned to the suspect or destroyed. If the property owner requests that the property be destroyed, the investigator should obtain the request in writing. Upon ascertaining the desired disposition, a court order must be received either authorizing the release or destruction of the property. Either the investigator or the suspect may request the court order.

A copy of the court order releasing the property shall be sent to the EC, who will file it appropriately in the ID log book. The evidence identified on the court order shall be inventoried to ensure that it is consistent with the evidence release and transfer of that evidence shall be entered into the ID Evidence Log by the EC. The lead investigator is responsible for coordinating the return of seized property to the owner and is to work with the EC and supervisor to arrange for the return of the property. The owner shall acknowledge receipt of the property using the BOE-880. One copy of the order and the BOE-880 shall be forwarded to the investigator for incorporation into the case file.

*Please note: To be valid, the court order for the return of evidence/property must be date stamped and signed by a judge. The case file must always include copies of verification that all parties affected by the seizure of the evidence were notified, or at least the attempt at notification was made, of our request to the court. Every attempt should be made to return seized property to its rightful owner.*

### **GRAND JURY MATERIALS**

**825.000**

All records acquired by an investigator via a grand jury subpoena must be inventoried and logged as evidence taken into custody. Grand jury materials must be segregated, clearly labeled as grand jury material, placed in a separate container, file cabinet, etc., and stored as evidence. The EC and investigator must guard against unauthorized disclosure of these documents obtained by the grand jury. It is imperative that, in accordance with Rule 6(e), of the Federal Rules of Criminal Procedure, and 18 U.S.C. section 3322(a), grand jury materials be disclosed only to those persons specifically authorized to retrieve the information. The EC, the investigator, and the supervisor will ensure that no unauthorized disclosure is made.

# **Investigations Division Policy and Procedures Manual**

## **Chapter Nine**

### **Prosecution Packages**



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*

## PROSECUTION PACKAGES

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### EXHIBITS

# PROSECUTION PACKAGES

## CHAPTER NINE

### PROSECUTION PACKAGES

900.000

#### GENERAL

900.005

Successful criminal prosecution of tax evasion requires that the investigative data be summarized and organized in order to prove the elements of the offense. To the extent possible, the presentation of this information should follow a standardized format. The objective of the Prosecution Package (package) is to obtain successful prosecution of the criminal charges. The package will begin with a table of contents listing the following sections, each identified by a Roman numeral tab:

- I. Suspect Details
- II. Summary of Statutes
- III. Summary of Tax
- IV. Summary of Case
- V. Analysis of the Law
- VI. Detailed Narrative
- VII. Relevant Statutes
- VIII. Witness List
- IX. Exhibits List
- X. Exhibits

The package will be comprised of the above major sections, with as many subsections as needed to explain the issues and emphasize important evidence. Use the templates available on the ID Intranet. All packages are to be submitted in a white three ring binder.

The package should be prepared and written for an audience that is not familiar with the operations of the Board of Equalization. All references to agencies, units, or personnel, should be clearly identified for the reader and any references to words and phrases commonly used in the audit and compliance processes should be explained. ~~Three~~ Four items to keep in mind when preparing a prosecution package are:

- Be specific – talk about people by name. You may identify an individual in the beginning of the package and thereafter abbreviate his or her name in the text, e.g. John Doe, (Doe).
- Use active voice – “Joe Smith filed fraudulent returns,” rather than “Fraudulent returns were filed by Joe Smith,” or “Fraudulent returns were filed.”
- Be thorough - the package should contain complete and clear information in order to provide support for the findings, conclusions, and recommendations.
- Meet the needs of your prosecutor - packages should be written and arranged in order to satisfy the requirements of your prosecutor. Therefore, at times it may be necessary to deviate from the standardized format.

#### COVER PAGE

900.010

The package will be contained in a white three-ring binder with a cover page inserted into the clear front cover sleeve. The cover page will include the following information (Exhibit 1) :

- Defendant’s name
- Defendant’s DBA
- Defendant’s business address
- ID case number
- Relevant account numbers
- Investigator’s name
- Investigator’s business address
- Investigator’s telephone number(s)

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## COVER PAGE

(cont.) **900.010**

The standard major sections are further described below to assist investigators in outlining and developing a package. These sections are intended to provide general guidance and direction, and do not have to be included in every package, unless noted.

## **TABLE OF CONTENTS**

**900.015**

The table of contents identifies where each section of the report can be found ~~including witness list(s) and exhibits~~ (Exhibit 2).

## **SECTION I – SUSPECT DETAILS**

**900.020**

Each prosecution package must include a section that provides a color DMV photograph and the following details for each suspect:

- Name
- AKA(s)
- Address(es)
- SSN
- CDL
- DOB
- Vitals (sex, height, weight, hair, eyes)
- Telephone number(s)

Legal Representation/Accountant (name, business address, phone number)(Exhibit 3).

## **SECTION II - SUMMARY OF AFFECTED-STATUTES**

**900.025**

This section includes a chart displaying the name of the defendant(s), statutes violated, dates of violation(s), classification of the crime (felonies listed first), punishment for the violation(s), and statute of limitation (Exhibit 4). Revenue and Taxation Code Section 7154, provides “Any prosecution for violation of any of the penal provisions of this part shall be instituted within five years after the commission of the offense, or within two years after the violation was discovered, whichever is later.” Other violations have shorter limitation periods.

Date of discovery should be included near the bottom of the page with a short explanation as to how the investigator arrived at the date of discovery (e.g. date investigator discovered that subject was receiving untaxed tobacco pursuant to review of tobacco manufacturer’s shipment reports). Date of discovery is the date that the Board was first made aware that a person might have violated the Revenue & Taxation Code involving a tax program administered by the Board. This may or may not be the date that the complaint was received that prompted the investigation. For example, if ID received an investigative complaint on June 30, 2008, and you later learned that a Board district office had previously received a similar complaint about this same person on July 1, 2007, but failed to forward the information to ID, then the date of discovery would be the earlier date of July 1, 2007.

The statutes for felony tax evasion for the three programs (sales and use, diesel and cigarette and tobacco products), are essentially identical. These sections define a felony as “when the amount of unreported tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period.”

Therefore, only one felony count for each 12 month period of time will be recommended unless:

- the evasion for each and every return filed exceeds \$25,000, or
- the entire period in question is less than 12 months. In this case one count only, unless the evasion for each and every return filed exceeds \$25,000.

There will be one felony count for each 12-consecutive-month period beginning on the first day of the reporting period and ending on the last day of the reporting period, in which fraud is discovered. For example, fraud is discovered in the August 2002 reporting period for a taxpayer on a quarterly reporting basis. The 12-consecutive-month period begins on July 1, 2002 and ends June 30, 2003. The 12-consecutive-month period will be computed on a monthly basis for unlicensed taxpayers that did not file tax returns during the period in which fraud was discovered. There should be no overlapping between felony count periods.

This is a conservative recommendation to the prosecuting attorney. However, it is essential to make clear to the prosecuting attorney that the number of felony counts is his/her decision limited only by the statutes involved. Therefore, the prosecuting attorney is free to bring as many counts as he/she believes can be sustained.



## PROSECUTION PACKAGES

### **SECTION III - SUMMARY OF TAX**

**900.030**

In chart form, this section provides the reader with a convenient display summarizing the tax evaded by period and 12-month range. ~~Beneath the chart, a statement should be made as to the date of discovery (Exhibit 5). For subjects on a monthly filing basis, monthly information shall be scheduled and sub totaled by quarters.~~

### **SECTION IV - SUMMARY OF CASE**

**900.035**

The summary provides the reader with a brief synopsis of the case and answers the questions: who, what, when, where, and why. This section functions like an introduction to a short story. Except in the more complex cases, the summary should not exceed one page in length. ~~The synopsis should not appear again verbatim in the detailed narrative.~~

### **SECTION V - ANALYSIS OF THE LAW**

**900.040**

This section provides a short description (1 or 2 pages) of the law(s) applicable to the case. This section is only necessary if the District Attorney requests it or the investigator is working with a new District Attorney who is unfamiliar with the tax and fee laws administered by the Board (Exhibits 6, ~~and 6A, and 6B~~).

### **SECTION VI - DETAILED NARRATIVE DESCRIPTION**

**900.045**

This is the section of the prosecution package that tells the actual story of the case. Investigators must be concise, specific, and consistent in describing the results of their investigations. Make sure the narrative is organized in a logical fashion (for example, chronologically or by location or entity). A reader, unfamiliar with the case, should be able to answer the following questions with ease:

- 1) What is the crime?
- 2) Who committed the crime?
- 3) When was the crime committed?
- 4) Where was the crime committed?
- 5) Why was the crime committed?
- 6) How was the crime committed?

- a. STATEMENT OF FACTS. This section will contain all the information obtained during the investigation and present the story of how the crime was committed. This is the ID's opportunity to describe in detail the investigation into the criminal activity, demonstrate the quality of gathered documentation and other evidence, and focus the prosecution's case against the suspect. In documenting an investigation, the investigator will provide a detailed narrative description, with references to witnesses, exhibits, investigative interviews, and other documented evidence.

Elements contained in this section of the prosecution package will include, but are not limited to: 1) reporting all important and relevant facts and evidence accurately and completely, without embellishment or exaggeration, using clear and concise sentences and paragraphs; 2) describing and using specific exhibits to corroborate statements.

- b. FACTS WHICH SHOW REQUISITE INTENT. In this section, investigators will describe suspect activities that clearly demonstrate willful intent to commit tax evasion. Unlike the description of the investigation, this section links key elements of the crime with corroborative witness statements and exhibits to demonstrate intent to commit a crime.

### **SECTION VII - RELEVANT STATUTES**

**900.050**

The section provides the complete text of the relevant sections of law verbatim (Exhibit 7, ~~7A, and 7B~~).

### **SECTION VIII - WITNESS LIST**

**900.055**

The section will contain each witness's full name, title, business address, and telephone number. In addition, the list will contain the evidence, by exhibit number, that each witness can testify to, and a brief description of each witness's testimony. The witness list should only include people who have personal knowledge of relevant events and/or will provide testimony towards the admissibility of documents into evidence in court. Witnesses will generally be listed in the order of the exhibit numbers they will testify to (Exhibit 8).

## INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

### **SECTION IX – EXHIBITS LIST**

**900.060**

The prosecution package shall include a list of exhibits containing the exhibit number and a brief description of each exhibit (Exhibit 9).

~~The exhibits will be used to provide documentation of or support statements made in the main body of the prosecution package, e.g. licenses, invoices, correspondence, admissions by the subject, memoranda of contacts, statements, and audit schedules. Each exhibit should be tabbed, numbered, and organized numerically.~~

### **SECTION X – EXHIBITS**

**900.065**

This section will contain the exhibits used to provide documentation of or support statements made in the detailed narrative of the package, e.g. licenses, invoices, correspondence, admissions by the subject, memoranda of contacts, statements, and audit schedules. Each exhibit should be tabbed, numbered, and organized numerically in the order presented in the detailed narrative.

*Note: Tobacco products tax cases must include an exhibit(s) documenting the verification of the tax paid status of the tobacco products, e.g. purchase invoices with notations that the “customer is responsible for all state excise taxes”.*

### **APPROVAL PROCESS**

**900.070**

Once the supervisory approval process is completed along with the Area Administrator review, the prosecution package will be submitted, on form ID-101, Approval and Tracking, to the Chief of the ID (Chief) or his/her designee, for review. The Chief will submit the package to the Legal Department for its review and approval.

The Legal Department’s review should take no longer than two weeks. Once returned, the Chief’s secretary will distribute to the appropriate area administrator for further distribution.

*Note: Should an investigator make a copy of the prosecution package, stamp “DRAFT” on each page of the package. All copies are subject to discovery.*

### **CRIMINAL PLEA BARGAIN AGREEMENTS**

**905.000**

#### **GENERAL**

**905.005**

In the past, taxpayers appealing civil tax audits at Appeals Conferences and Board Hearings have frequently argued that their case was settled as part of a global settlement in the criminal investigation matter prosecuted by the county district attorney offices. Their contention is that the plea bargain agreements reached during criminal proceedings in the county courts resolved their total tax liability resulting from both criminal and civil audits. The Board has determined that this contention is incorrect since the settlement agreement resolves only the criminal portion of the case by ordering restitution that allows the defendant to avoid or diminish jail time. The settlement agreement does not prohibit the Board from pursuing the assessment of additional taxes, penalties and interest resulting from the civil audit process. Accordingly, it is essential that ID investigators clearly articulate the Board’s position regarding the civil tax liability to the taxpayer, the taxpayer’s attorney, and the prosecuting attorney.

To ensure that all of the Board’s interests are captured in plea arrangements, restitution agreements, and/or punitive actions of criminal cases a district attorney may be prosecuting on behalf of the Board, staff must include a standard Plea Letter with their prosecution packages (Exhibit 10).

This Plea Letter is important because, among other pertinent information, the letter requests that the defendant in the case be advised that a plea arrangement does not constitute a global settlement and that the Board may conduct a civil audit to address audit periods or taxable transactions that may not have been included in the defendant’s criminal case.

Previously, many defendants who entered into plea agreements thought that the plea agreement covered all liabilities owed to the Board. This Plea Letter will help eliminate these misunderstandings by defendants.

### **PLEA BARGAIN AGREEMENT PROCEDURES**

**905.010**

The following steps shall be followed when placing flags on all identified accounts.

## PROSECUTION PACKAGES

Step	Who	Action
1	Investigator	<ul style="list-style-type: none"> <li>Investigator shall orally advise the prosecuting attorney handling the case that the investigator is not authorized to negotiate any global settlements when a prosecution package is submitted to the prosecutor's office, and that any plea bargain that may be reached will resolve only the criminal liability and will not relieve the taxpayer of any civil tax liability.</li> </ul>
2	Supervisor	<ul style="list-style-type: none"> <li>Write follow-up letter confirming the above to the prosecuting attorney handling the case. Consult with Legal as needed.</li> </ul>
3	Investigator/Supervisor	<ul style="list-style-type: none"> <li>Investigator and his/her supervisor shall meet with the Area Administrator to discuss and prepare the Board's position solely for the criminal matter at hand; this is after the prosecuting attorney's office has filed criminal charges and prior to any meetings between the prosecuting attorney and taxpayer's attorney.</li> </ul>
4	Investigator	<ul style="list-style-type: none"> <li>Investigator shall make a written request in the prosecution package submitted to the prosecuting attorney's office that the plea bargain agreement stipulate the agreement <u>does not</u> prohibit the Board from pursuing the assessment of civil tax liability from the taxpayer.</li> </ul>

### **GUIDELINES FOR DISTRICT ATTORNEYS FOR DISBURSEMENT OF FINES/PENALTIES**

**910.000**

ID-403, Guidelines for District Attorneys (DA) for the Disbursement of Penalties Collected Pursuant to Revenue and Taxation (R&T) and Business & Professions (B&P) Code Sections (available on the ID Intranet), provides the DA's office with instructions for submitting to the Board fines or penalties collected pursuant to R&T and B&P code violations. Currently, all payments are allocated to one account (02-01000). Until it is possible for the Board to have the ability to apply monies to separate funds, counties are to follow these guidelines for remittance of these fines to the Board.

# **CONFIDENTIAL**

## **REQUEST FOR CRIMINAL COMPLAINT**



### **STATE OF CALIFORNIA BOARD OF EQUALIZATION INVESTIGATIONS DIVISION**

**vs.**

**Jack and Jill Hill  
DBA: Up the Hill  
1212 Rhyme Way**

Case No.: 121  
Account No.: SR KH 99-999999

Prepared by:  
Len Smith, Sr. Investigator  
State Board of Equalization  
450 N Street, Sacramento, CA 95814  
(916) 324-1111

**Exhibit 1**



Suspect Details .....	Section I
Summary of Statutes .....	Section II
Summary of Tax Liability .....	Section III
Summary of Case .....	Section IV
Analysis of the Law .....	Section V
Detailed Narrative .....	Section VI
Relevant Statutes .....	Section VII
Witness List .....	Section VIII
Exhibit List .....	Section IX
Exhibits .....	Section X



## Section X

### SUSPECT DETAILS

#### Defendant

1. Name		AKA		Soc. Sec. No.	
[Redacted]		None		[Redacted]	
Address 1				CDL #	
[Redacted]				[Redacted]	
Address 2				D.O.B.	
[Redacted]				[Redacted]	
Sex	Height	Weight	Hair	Eyes	Telephone
Male	5'11"	220	Brn	Brn	[Redacted]

#### Legal Representation/Accountant



## Section

### SUMMARY OF STATUTES

Defendant	Violation (s)	Date(s) of Violation(s)	Felony or Misdemeanor	Fine and/or Prison Term	Statute of Limitation

\*\* Date of Discovery is \*\*



## Section X

### SUMMARY OF TAX

Period	Sales Tax reported to BOE	Audited Sales Tax DUE	Sales Tax NOT reported to BOE	Total Sales Tax NOT reported to BOE in a 12-month period.
2Q-95	\$ 6,923	\$ 7,743	\$ 820	\$ 34,948
3Q-95	0	8,829	8,829	
4Q-95	0	25,299	25,299	
1Q-96	0	2,915	2,915	89,392
2Q-96	0	20,335	20,335	
3Q-96	0	50,068	50,068	
4Q-96	0	16,074	16,074	
1Q-97	0	27,968	27,968	113,721
2Q-97	0	5,478	5,478	
3Q-97	0	60,696	60,696	
4Q-97	0	19,579	19,579	
1Q-98	0	596	596	50,448
2Q-98	0	2,098	2,098	
3Q-98	0	18,032	18,032	
4Q-98	0	29,722	29,722	
Total	\$ 6,923	\$295,432	\$288,509	\$288,509





## Section X

### ANALYSIS OF SALES AND USE TAX LAW

Every person, firm, partnership, corporation, or other entity engaged in the business of selling tangible personal property at retail or wholesale in California must obtain a seller's permit from the State Board of Equalization (BOE). A seller's permit allows the retailer or wholesaler to sell tangible personal property such as (example).

In general, sales tax is imposed upon the retailer for making retail sales of tangible personal property. In legitimate transactions, when the retailer makes a retail sale of tangible personal property to a customer, the sales price the customer pays includes the sales tax. The retailer reports the gross receipts from all its retail sales of tangible personal property on a BOE tax return, and the retailer pays the sales tax to the BOE based on its gross receipts. This occurs whether or not the retailer included sales tax reimbursement in the price the customer was charged.

A retailer is required to report both taxable and non-taxable sales on a BOE tax return, and may deduct exempt sales from the total sales to arrive at a taxable measure. Common exemptions include (1) sales to other retailers for the purpose of resale; (2) sales to customers not residing or doing business in California; (3) sales of food products for human consumption; and (4) sales to the United States Government. The retailer must be able to provide supporting and valid documentation for any exemption claimed.

For example, sales tax does not apply to sales of tangible personal property such as (example) when a retailer or a wholesaler with a seller's permit purchases tangible personal property for resale purposes from another wholesaler or retailer with a seller's permit. However, in such transactions, the seller must obtain a BOE-prescribed form from its customer. The form assists the seller in providing proof to the BOE that the tangible personal property was not sold at retail and therefore was not subject to sales tax.



## Section X

### ANALYSIS OF DIESEL FUEL TAX LAW

The California Revenue and Taxation Code imposes an excise tax on each gallon of diesel fuel used to power trucks and other vehicles on highways and roads in the state. This tax is the California Diesel Fuel Tax. The Diesel Fuel Tax was 16 cents per gallon in 1992, and 17 cents per gallon in 1993. Since 1994, the Diesel Fuel Tax has been 18 cents per gallon. The revenues generated by the Diesel Fuel Tax are used by the government to build and maintain roads and highways, and related infrastructure.

The Diesel Fuel Tax is collected by the California State Board of Equalization (BOE). Prior to July 1, 1995, diesel fuel could be purchased from the fuel terminal and sold tax-free from one fuel wholesaler to another, provided that each wholesaler had a valid BOE issued Use Fuel Wholesaler's permit (an "FW" permit) and a sales tax seller's permit (an "SR/SY" permit; the FW and SR/SY permits are collectively referred to herein as "wholesaler's" permits). The wholesaler who sold the diesel fuel to a service station or truck stop was required to collect the Use Fuel Tax from the service station or truck stop and remit the tax to the BOE within 25 days of filing an FW return with the BOE indicating how much taxable diesel fuel the wholesaler sold during the month. In addition, the wholesaler was required to file a monthly report ("SG" return) indicating the total gallons of diesel fuel the wholesaler bought and sold during the month, who the wholesaler purchased the fuel from, and to whom it was sold.

One of the ways diesel fuel wholesalers were able to evade payment of federal and state fuel excise taxes was by purchasing and selling jet fuel (which, if purchased tax-free pursuant to a valid California excise tax exemption certificate, must be used in airplanes or for some other "off-road" purpose). Because jet fuel and diesel fuels have very similar chemical properties, they can easily be blended and used to operate diesel fuel engines. If a wholesaler sells jet fuel to a retail service station or truck stop for sale to on-road consumers, that wholesaler is liable for the Use Fuel Tax due on the fuel. For state excise tax purposes, the jet fuel is treated the same as diesel fuel when it is sold for use in a vehicle on the highway.

In this case, the individuals involved stole jet fuel and sold it to retail service stations or truck stops for sale to on-road consumers. They therefore were liable for the Use Fuel Tax concerning such fuel sales.



## Section X

### RELEVANT STATUTES

Revenue and Taxation Code, Part 13 of Division 2 (2001)

#### CALIFORNIA CIGARETTE AND TOBACCO PRODUCTS TAX LAW

**Section 30474** Penalty for selling unstamped cigarettes.

Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined not more than one thousand dollars (\$1,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the court. In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

**Section 30478** Penalty; retailer purchasing from unauthorized persons.

It shall be a misdemeanor for any retailer, as defined in Section 6015, to knowingly purchase cigarettes or tobacco products for resale from any person except a distributor or wholesaler licensed pursuant to this part.



## Section X

### WITNESS LIST

Witness	Exhibit Number	Description of Evidence/ Testimony
Mary Green 1345 Hero Court Sacramento CA, 95829 (916) 555-9997	1-4	Exhibit 1 & 2: Testify concerning administrative seizure of unstamped cigarettes on _____ and _____ Exhibit 3: Testify that written notices of violations were sent to the taxpayer Exhibit 4: Testify that taxpayer received copy of Regulation of 1698, Records
Martin Smith ABC Special Agent 1119 South Drive, Ste 88 Sacramento CA, 95826 (916) 383-3963	5-6	Exhibit 5: Testify concerning execution of search warrant at business location Exhibit 6: Testify concerning the items identified in the return of warrant which were seized from the business location.
Leroy Jones ABC Special Agent 1119 South Drive, Ste 88 Sacramento CA, 95826 (916) 383-3965	7	Exhibit 7: Testify concerning items identified in the return of warrant which were seized from the residence of Mr. Capone
Elizabeth Orange Tax Representative 1220 Ranch Road Wacko, CA 98756 (916) 555-8989	8	Exhibit 8: Testify concerning discarded cigarette cartons located in trash bin which contained felt-tip markings initiated by ID and OSI.
Mike Blewit Senior Sales Clerk 1530 Capitol Ave Sacramento CA, 95814 (916) 555-5656	30, 33, 35-40, 45 & 49	Exhibits 30, 33, 35-40, 45 & 49: Testify concerning authenticity of Slick's AM/PM business records.



## Section

## EXHIBIT LIST

[illegible]



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

INVESTIGATIONS DIVISION  
450 N STREET MIC:42  
916-324-0105 • FAX 916-324-1578  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

BILL LEONARD  
Second District, Ontario/Sacramento

MICHELLE STEEL  
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

[Date]

[DDA or DAG name]

[Title]

Department of Justice

Attorney General's Office

[street address]

[city, state, zip code]

Re: People of the State of California vs. [Defendant's name]

Dear [name],

The Board of Equalization (BOE) respectfully requests that all plea arrangements specific to this criminal case explicitly include all of the following:

1. Punitive action against the defendant as appropriate, at the discretion of the court.
2. Restitution for the balance owed to the BOE (shown below), as disclosed in the criminal investigation for the period [time frame of criminal case].
3. Unpaid Tax: [amount of unpaid tax and interest to date]
4. Recovery of [BOE and/or CHP] investigation costs of [dollar amount] ([total hours] hours @ \$[hourly rate]), as of [date].
5. The defendant's acknowledgment, [defendant name], that the resolution of the criminal case is not a global settlement. The BOE conducts a civil audit of the business owned, controlled and/or operated by the defendant in nearly all criminal cases. Civil audits often encompass audit periods and taxable transactions that may not have been included in the criminal case.
6. The defendant's agreement to cooperate fully with BOE audit staff regarding any civil audit.
7. The defendant's acknowledgement as to the following:
  - BOE audit staff may discover additional tax liabilities during the civil audit for time periods and taxable transactions that many not have been included in the criminal case.
  - The defendant has the right to file a petition to appeal any determination of tax, penalty and interest revealed by the BOE audit, which will be handled through the BOE's administrative process.
  - Timely payment of criminal restitution in the criminal case may not entirely relieve the defendant of the legal obligation to pay all amounts due. The restitution amount will be

credited toward the taxes, interest, and penalties due, but if these amounts owed exceed the restitution amount, the taxpayer will owe the difference to the BOE.

The BOE also requests that any agreement for restitution or punitive action for sentencing imposed by the court explicitly include all of the following:

1. A requirement that payments be made in certified funds directly to the BOE. Payment arrangements must specify the periodic payment schedule and the total amount of each installment to be paid.
2. Full restitution of taxes, as well as full reimbursements for investigative costs.
3. Mandatory probation following time served.
4. A requirement that the defendant cease conducting further business activities without the required licenses and/or permits and obey all laws.
5. A statement that if the defendant fails to pay according to the terms of the agreement, or fails to adhere to its conditions, the defendant will be required to provide audited financial statements, business books and records to the BOE upon demand. Failure to provide the requested documents within a reasonable period of time will constitute grounds for revocation of probation.

The court's actions regarding conditions and/or requirements of plea or restitution agreements for this criminal case are relevant to the BOE civil audit of the defendant's business and administrative proceedings for the purpose of adjudicating the civil case. As such, the BOE respectfully requests that the conditions/requirements be read into the court record in this criminal case if it is not possible to include them in the plea or restitution agreements.

If you have any questions regarding this matter, please contact me at [telephone number].

Respectfully yours,

[Author's Name]  
[Title]

cc: [name(s)]

# Investigations Division Policy and Procedures Manual

## Chapter Ten

### Audit



Investigations Division  
California State  
Board of Equalization

*This is an advisory publication providing direction to staff administering the Revenue and Taxation Laws of the state of California. Although this material is revised periodically, the material is not all inclusive and does not address every possible situation. Please reference Board standards manuals (BEAM, Travel Guide, etc.), the Audit Manual, the Compliance Policy and Procedures Manual, or the Compliance Policy and Management Guidelines for additional assistance when necessary.*



## AUDITING

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# AUDITING

## CHAPTER TEN

### **AUDITS 1000.000**

### **AUDITING 1000.005**

Auditing provides the Investigations Division (ID) auditor the ability to determine whether the tax returns obtained from the taxpayers are accurate. There are many methods available to the ID auditor in conducting the audit. For example, the audit may be conducted by examining all documents within the audit period or by examining a sample of the documents during the audit period and projecting results found in the sample. Auditing ultimately provides the ID auditor the answer to the question, “Was the proper amount of tax reported?” If no tax returns were filed, then auditing provides the answer to what was the amount of tax that should have been reported.

### **ID AUDITING 1000.010**

ID auditors are responsible for preparation of a civil audit. The civil audit will be prepared in a manner that allows the ID investigator the opportunity to extract the requisite information required in order to support felony tax evasion. Civil audits are to be conducted following Board of Equalization (BOE) approved guidelines for auditing.

Unless specified elsewhere, the Audit Manual, maintained by the Sales and Use Tax Department, is to be followed in regards to audit workpapers and presentation of the audit.

### **ID AUDIT REQUEST 1000.020**

A request for a civil audit memorandum will be prepared by the Area Administrator and forwarded to the Division Principal Auditor. The memorandum should include the details of the case. This request will accompany an ID 014-B, *Approval and Tracking*. The request will be as a result of documents received either as a result of a search warrant or other methods such as subpoenas etc. Audit requests may also result from the investigative group determining a case does not warrant felony level prosecution. The Division Principal Auditor (DPA) will assign the audit to the Supervising Tax Auditor who will assign the audit to the auditor.

The auditor will receive a package that includes:

- Approval and tracking form
- Request for civil audit memorandum
- Copy of search warrant
- Statement of probable cause
- Inventory of records seized during the search warrant
- Any applicable work schedules prepared by the investigative group
- Copies of any interview reports
- Copy of referral from district or program area
- Copies of audit work including schedules and comments conducted by district or program area

### **AUDIT PROGRAM 1005.000**

Within two weeks of receiving the audit assignment, the audit supervisor will schedule a meeting with the auditor, audit supervisor, investigator and investigator’s supervisor to determine the audit program.

Within two business days of the meeting, the auditor will prepare an audit program memorandum addressed to the audit supervisor and investigative supervisor for their review and signatures. The Area Administrator will be copied on the audit program.

The audit program memorandum will contain all the information discussed and agreed upon in the initial meeting, including but not limited to, the account number(s), tax program(s) being audited, type of testing/examination,

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## AUDIT PROGRAM

(cont.) 1005.000

methodology, comments etc. Also to be included is any work to be done in conjunction by the investigator, (additional records, interviews, etc) and the time frame for providing the additional work.

The following statement must be included on all audit program memorandums: "Additional information discovered during the course of this audit/investigation could alter the anticipated completion date. This timeline may also be adjusted due to management needs. Should this occur, a revised audit program will be created, and submitted detailing the reason for the projected delay and anticipated timeline?"

## AUDIT STATUS MEETING

1005.005

Approximately every 30 days after the audit program memorandum, a status meeting will be held with the auditor, audit supervisor, investigator and investigative supervisor to discuss the audit status. The status meeting will discuss the progress on the audit. Should there be any deviation from the audit program, an updated audit program memorandum will be prepared by the auditor indicating the revisions from the original memorandum. The revised audit program memorandum will be prepared within two business days of the meeting, addressed to the audit supervisor and investigative supervisor for their review and signatures. The Area Administrator will be copied on the audit program.

## CIVIL AUDITS

1010.000

Civil audits must conform to BOE audit standards. Each tax program may have specific requirements or guidelines that must be followed.

The auditor is responsible for the submission of the civil audit in the required format (see Audit Manual Section 213.00). All audits are subject to review. Once the review process is complete, the audit will be sent to the Area Administrator for continuation of the criminal process.

The civil audit does not get discussed and/or billed until the Area Administrator informs the DPA in writing to issue a "Notice of Determination." The authorization may be a result of the criminal proceedings that have been completed, the prosecuting attorney approves the issuance of a Notice of Determination, or there is no further criminal proceedings involved.

### Preliminary Review

After receipt of the audit assignment and prior to the audit program meeting, the auditor will conduct a review of the available records seized during the execution of the search warrant. The auditor will need to coordinate with the evidence custodian, as these records will be stored at the evidence warehouse.

During review of the records, the auditor should note for the audit file what records are available for audit purposes. For example, if the search warrant inventory states sales journal, include what information is on the sales journal. If the inventory states sales invoices, explain how they are maintained (alpha, customer, date or invoice number). Detail what information is on the sales invoices and approximately how many source documents there are (i.e., 1,000 invoices per year or three years worth of cash register tapes, etc.). The auditor must be careful about what is written in the notes. Notes are subject to disclosure.

### Daily Log (Chronological Notes)

Upon receipt of the audit assignment, the auditor will prepare a daily log. This daily log will chronicle all of the day to day activity conducted on the audit. The log should be kept in sufficient enough detail to provide an understanding of what was done.

For example, 1/02/05: traced cash register tapes for Jan-Mar 2002 into the sales journal and found postings to be correct. There were six missing days, Jan 23, Feb 7-9 and Mar. 3-4. Compared totals and discovered that there was a \$15,000 difference between recorded tax collected and reported tax.

The daily log is to be kept current. The daily log will be updated the last business day worked that week. The log will be a cumulative record of your activity including all the days and hours recorded for an assignment. The audit supervisor will make comments on the log. This log should be used to assist the auditor in preparing the final audit report.

# AUDITING

## AUDIT TESTING PROCEDURES

**1010.005**

### Summary Journals Available

While examining the taxpayer's records, the auditor will trace sufficient source documents into the summary journals to determine the accuracy of the journals. Depending on the number of transactions, a minimum of a month's source documents must be traced into the summary journals for each year that summary journals are available.

If all the source documents are posted into the summary journal, the summary journals may be used to establish an audit liability. Specific comments describing exactly what period (s) were tested and the result of the test must be included.

If there are source documents not posted to the summary journal, a schedule will be prepared detailing the source documents not posted to the journals. The journals may be used for one source of non-compliance (Recorded vs. Reported) and the invoices not posted would be a second source of non-compliance. Separate percentages of error must be calculated and brought forward to a lead schedule.

If there are more entries in a summary journal than invoices, the auditor should describe the circumstances, and show how much the invoices total and what the additional amounts are which do not contain the support of invoices.

Once the testing of invoices to journals has been completed, the auditor may use the summary journals to arrive at the liability. The auditor must sufficiently address the testing process, the results of the testing, and why the summary journals are being used to conduct the audit.

### **NO SUMMARY JOURNAL AVAILABLE**

**1010.010**

In situations where no summary journals are available or are not reliable, the auditor must schedule sufficient source documents to arrive at an amount evaded of at least \$ 25,000 in any twelve consecutive months for criminal audit purposes.

### **THIRD PARTY REQUESTS**

**1010.015**

Whenever additional information is required to complete an audit, the auditor will forward a detailed request to the investigator of the additional items required. A copy of the request must be sent to the audit supervisor and investigative supervisor. While there is a case in process, the auditor shall not contact any third parties directly. It is the investigator's responsibility to obtain the required information needed to complete the audit in a timely fashion.

Information obtained on a BOE form (i.e. 504, XYZ) which refutes the taxpayer's contention on the taxability of a transaction must be included in the audit workpapers.

Information obtained from a third party either via a subpoena or written inquiry which is used to arrive at purchases or sales, may be summarized, provided it contains all proper identifying information such as invoice date, invoice number, description of item sold, consumed or purchased, destination and comments where applicable (i.e. net of freight, tax charged, etc.).

### **REQUEST FOR FRAUD MEMORANDUM**

**1015.000**

Regardless of the tax program, if the recommended audit assessment is a result of fraud, the auditor is required to prepare a memorandum from the ID Division Principal Auditor to the Chief requesting the application of a civil fraud penalty. The memorandum must contain the following:

- Section of the law governing the fraud penalty
- Who in the business perpetrated the fraud
- The relationship of those individuals perpetrating the fraud to the business
- Evidence of intent to evade the payment of tax
- Evidence the taxpayer was knowledgeable of the tax laws and reporting requirements for that business

# INVESTIGATIONS DIVISION POLICY AND PROCEDURES MANUAL

## REQUEST FOR FRAUD MEMORANDUM

(cont.) 1015.000

- The amount of tax intentionally not reported
- A line for the Chief's signature

The request for fraud penalty memorandum must contain sufficient information to support the application of the fraud penalty. In order to prepare a request for fraud penalty memorandum, the auditor should examine the prosecution package, probable cause statement, all interview reports as well as any other information.

The request for fraud penalty memorandum must contain the following sections:

### **History of Business Operations**

This area identifies the business ownership, entity information, product/service provided, an introductory explanation into the business, how the fraud was perpetrated and what led to ID's involvement.

### **Knowledge**

An explanation of the taxpayer's understanding of the business, how the tax law applied to the business, and direct involvement with the actions that created the fraud.

### **Intent**

A thorough detailed explanation on how the liability is not the result of bookkeeping errors, clerical errors or misunderstanding of the law. This area must support the theory that the liability is the result an effort to deceive, mislead or misrepresent the true amount of the tax due. This area will be supported by acts, documents or statements made by the taxpayer or any other source, which clearly demonstrates that the tax liability is a result of an attempt to not report the correct amount of tax.

### **Conclusion**

A summary describing why ID believes the application of intent to evade penalty is warranted. If a final outcome of the criminal proceedings is known, then it must be included in this area. If there are no criminal proceedings, then a comment explaining the reason why criminal prosecution was not done must be included.

Each memo prepared requesting the application of the fraud penalty will include copies to:

### **Sales and Use Tax**

- Chief of Field Operations
- District Administrator of the field office
- Area Administrator
- Supervising Tax Auditor
- Auditor

### **Excise Taxes and Fees Division**

- Deputy Director, Property and Special Taxes
- Chief, Excise Taxes and Fees
- Area Administrator
- Supervising Tax Auditor
- Auditor

### **Fuel Taxes**

- Deputy Director, Property and Special Taxes
- Chief, Fuel Taxes
- Area Administrator
- Supervising Tax Auditor
- Auditor

## **AUDITING**

### **AUDITS OF RELATED ACCOUNTS**

**1020.000**

Whenever an auditor begins the audit process, the auditor must check to see if there are any additional permits held by the subject, regardless of which tax program. The auditor should audit all related accounts through the same audit period of the main account. If a decision is made not to audit the related accounts, then the auditor must waive those accounts. This is done to keep all the related accounts on the same audit period and to avoid having the district or program area staff begin an audit while an investigation is in process.

### **BOOKS AND RECORDS OBTAINED VIA A SEARCH WARRANT**

**1025.000**

Audit periods will generally include the last return which should have been filed by the subject. When books and records are obtained as a result of a search warrant, the audit will include the last return period filed prior to the execution of the search warrant. It is possible, however, to extend the audit period to include returns filed after the execution of the search warrant. To include periods after the date of the search warrant, the auditor must show that the subject continued with the same type of under-reporting prior to the execution of the warrant. If the auditor does not include periods after the date of the warrant, then a comment indicating the reason(s) why the auditor is omitting those periods is required.

### **TRANSMITTAL LETTERS MAILED WITH AUDITS**

**1030.000**

Every "Report of Field Audit" will be mailed out with a transmittal letter to the subject. Once the civil audit has been completed, reviewed and approved, headquarters administrative staff will mail the notices and transmittal letters out to the subject. Approval must be obtained from the Area Administrator prior to mailing out or discussing any documents. It is important to know whether the subject will concur with the audit. Each tax program has its own transmittal letters. The auditor will indicate on the audit report whether the taxpayer, is or is not in concurrence. If the audit is not concurred, an 836, Report of Discussion will be prepared.

### **DUAL DETERMINATIONS**

**1035.000**

Civil audits conducted on a corporation where a civil fraud penalty is recommended are required to contain comments on the back of the BOE-414A addressing the need for dual determinations. A dual determination enables the appropriate person who was responsible for the fraud having been committed to be held jointly liable for the liability as well as the corporation. Each person being billed in IRIS for an audit liability is required to hold a tax identification number (TIN). The auditor will be responsible for ensuring that a TIN is obtained.

### **JEOPARDY DETERMINATIONS**

**1040.000**

Civil audits recommending a jeopardy determination must be accompanied by a memo from the DPA to the Chief requesting that a jeopardy determination be applied. For further explanation and reasons for applying a jeopardy determination, refer to the Audit Manual Ch. 2 Section 204.14.

### **SECTION 7155 PENALTY**

**1045.000**

A Revenue and Taxation Code section 7155, "Knowingly Operating Without a License" (50%) penalty shall apply instead of a Section 6485 (25%) penalty whenever appropriate. To apply the 50 percent penalty instead of a 25 percent penalty all of the following must have occurred:

- The taxpayer knowingly failed to obtain a sellers permit
- The measure of liability exceeds an average of \$1,000 per month
- The liability is not the result of a transaction involving the sale or use of a vehicle, vessel or aircraft, if the amount is subject to the penalty imposed under Revenue and Taxation (R & T) Code Sections 6485.1 or 6514.1

### **VERIFICATION COMMENTS**

**1050.000**

Verification comments should provide a detailed description of what occurred in the audit. The auditor must explain the process taken from the beginning of the audit to the end of the audit. The auditor must include the date of the search warrant, if applicable, and all the books and records seized during the execution of the warrant.

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## VERIFICATION COMMENTS

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If a particular area was not examined because no records were available, a comment explaining the circumstances involving the reason no audit work was performed must be included. The auditor must thoroughly develop all comments describing audit techniques performed should be referenced to the appropriate subsidiary schedule.

In general, comments must address the following:

- How was the audit done?
- What was done?
- What was examined?
- What conclusion was arrived at?
- How was that conclusion arrived at?

For specific details on how to write comments or where the comments should be, refer to Chapter 3 of the Audit Manual Policy and Procedures Manual.

### **Subsidiary Schedule Comments**

Any comments directly related to specific subsidiary schedule(s) should be included on the subsidiary schedule(s). Comments on the subsidiary schedules support the verification comments by adding detail related to the appropriate schedule.

### **Exhibits**

Exhibits should consist of information supporting the audit but not referred to in the audit. Examples of exhibits may include: copies of taxpayer communication, notes, etc.

Any items used in the audit or referenced in the audit must be identified as a work schedule as opposed to an exhibit. Examples may include: invoices, journals interview reports etc.

### **Law Section**

The law section governing the appropriate transaction should be quoted whenever possible. An explanation describing how the law applies and what makes the events subject to tax or exemption must be included.

### **Asset Packages**

All excise tax audits must contain an asset packet. For transactions occurring after January 1, 2004, where a jeopardy determination is prepared, the investigator will prepare the asset package. For all other audits, the auditor will request from the investigator the information required on the asset package and prepare the final packet. The asset package will be sent directly to Excise Taxes and Fees Division's Compliance staff to alert them of a potential liability and provide them with the most current information about the taxpayer's known assets.

### **Three Ring Binders**

All audits and field billing orders must be submitted in blue three-ring binders. Each binder must have a label that is computer generated and is centered three inches from the top of the binder. A label will be required on the side of the binder, one inch from the top. The labels shall contain the:

- Subjects name
- BOE account number
- Investigations Division case number

Any items requiring a signature will be clipped to the top of the binder and those pages will not be three-hole punched. Examples of items requiring signatures include:

- Investigations Division tracking sheet
- Request for fraud memo
- Request for jeopardy determination

## VERIFICATION COMMENTS

**(cont.) 1050.000**

- Request for dual-determination
- Any other documents requiring a signature for approval

Any items inside the binder must be three hole punched.

### **Discussion with Taxpayer**

Prior to any discussions with the taxpayer, Area Administrator approval is required. This requirement is designed to prevent potential conflicts between the criminal case and the taxpayer's civil liberties. All discussions with the taxpayer and/or their representatives should be held at a BOE office of the taxpayer's or representative's choice. If the case resulted in a criminal prosecution, the audit is to be discussed at a local Board office. If the case did not result in a criminal prosecution, under supervisory discretion, the audit maybe discussed at the taxpayer's business or representative's office.

### **Report of Discussion**

The auditor will prepare a BOE-836, Report of Discussion, whenever a discussion occurs with the taxpayer and/or their representative. This report of discussion is to be prepared and submitted to the auditor's supervisor within two business days of the discussion. A separate BOE-836 will be prepared for each discussion with the taxpayer and/or their representative.

## **Supervisory Review Process**

An opening report will be prepared 30 days after the area administrator assigns the request for civil audit to the DPA. The opening report will be required from the auditor to the supervising tax auditor, and be prepared on a form (to be created). The opening report should contain:

- Audit program
- Summary of the work that has been done during the 30 days
- Estimated completion date

A progress report will be due 60 days after the opening report (90 days from assignment to the DPA). The auditor will prepare the progress report to the Supervising Tax Auditor on a form (to be created). The DPA will review the progress report and may meet with the auditor directly. The progress report should contain:

- A copy of the opening report
- Summary of the work completed from the previous report
- Estimated completion date

If an audit is not be complete after 120 days from the date the chief assigns the request to the DPA, a progress report will be prepared by the auditor for the review of the Chief. The Chief will review the progress report and may meet directly with the auditor. Every 30 days after that a progress report will be prepared for the Chief.

For example:

January 1, 2XXX Chief assigns audit to DPA

February 1, 2XXX Opening report due to Supervising Tax Auditor

April 1, 2XXX Progress Report due for DPA (may meet with auditor)

May 1, 2XXX Progress Report due for Chief (may meet with auditor)

June 1, 2XXX Progress Report due for Chief (may meet with auditor)

July 1, 2XXX “””” etc.

***Taxpayer Address***

The auditor is responsible to ensure the most recent and current address is used. This may be different than what BOE records indicate. The auditor should consult with the investigator in order to obtain the most recent address.



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**VERIFICATION COMMENTS** **(cont.) 1050.000**

**Audit Review**

Upon completion of the civil audit, the auditor will prepare the audit report. The audit report will be reviewed by the ID's audit reviewer. Upon completion of the review process, the audit will be returned to the Area Administrator for continuance of the criminal proceedings.

**Audit Billings**

Once the criminal proceedings have been completed, or the Area Administrator requests the audit be billed, the audit will be returned to the auditor for final completion. The final completion will consist of updating the request for fraud memorandum, as well as any other type of items needed in order to prepare the audit for billing. The auditor will mail or provide a copy of all the audit workpapers to the taxpayer and/or their representative. A cover letter will be prepared by the auditor informing the taxpayer and/or their representative that they have two weeks to review the audit workpapers and to contact the auditor if they wish to discuss the audit. There must be a notation on the audit workpapers "Preliminary Findings Subject to Review. The letter will include copies of pamphlet number 70, The Taxpayer's Bill of Rights, Pamphlet number 76, Audits and Appeals, and Pamphlet number 17, Appeals.

In preparation for audit to be billed, the division's reviewer must approve the audit. Once the reviewer approves the audit, the DPA must approve the audit. Once the DPA approves the audit, the audit is forwarded to the Chief for approval of the request for fraud memorandum, if applicable. Once the Chief approves the fraud memorandum, the audit is ready to be processed for an issuance of a Notice of Determination.

Prior to a Notice of Determination being issued, the DPA will send an audit transmittal letter to the taxpayer. The audit transmittal letter will explain the next step in the audit process to the taxpayer (the next step is based on whether the audit is concurred, non-concurred or non-committal).

**CIVIL AUDIT PETITIONS** **1060.000**

ID will handle all the petitioned civil audits through the entire appeals process. This appeals process normally begins after the criminal prosecution phase of the case is completed. However, in some instances as in the case of a jeopardy determination, the appeals process may run simultaneously with the criminal prosecution of the case. When a valid "Petition for Redetermination" is received from a taxpayer on a case that is going through a criminal investigation, the phase status of the case will be changed to A-880 on the IRIS APL PR screen and will remain so for the duration of the criminal investigation. If no criminal investigation is contemplated, the case will proceed through the normal appeals process. If the ID becomes involved in a case that is already in the petitions/appeals process, please refer to the Board's petitions/appeals tracking procedures.

Initially, an appeals summary analysis of the case will be prepared before the case goes through the normal appeals process or an administrative hearing. The Board's Petitions Section is responsible for preparing the summary analysis relating to sales and use tax audit appeals cases. The ID petition person will prepare the summary analysis for appeals cases relating to Fuel and Excise Tax audit appeals cases.

The following are the responsibilities delegated to the staff for handling petitioned civil audits.

Who	Action
ID Petition Person	<ul style="list-style-type: none"><li>• Receives audit working papers along with a copy of the Notice of Determination from the ID Executive Secretary.</li><li>• Tracks the case on the IRIS Appeals Screen for sixty (60) days to see if a Petition for Redetermination or in the case of a jeopardy determination, a request for an administrative hearing has been filed by the taxpayer.</li><li>• If the audit is not petitioned, returns the audit working papers to the ID Executive Secretary so that it can be forwarded to the audit reviewer for storage.</li><li>• If the audit is petitioned, logs the audit information on the ID Petition Person's Excel Schedule for subsequent tracking purposes.</li></ul>

## AUDITING

	<ul style="list-style-type: none"><li>• Notifies the Chief, Area Administrator, and DPA.</li><li>• For Sales and Use Tax Audits, forwards the audit working papers along with the petition letter, if any, to the Petitions Section so that a summary analysis of the case could be prepared. (Petitions Section will prepare the summary analysis and will forward the file to the Board's Case Management Section for handling of the appeals on the case.</li><li>• For Special Taxes Audits, prepares the summary analysis and forwards the summaries along with audit working papers to Excise Taxes and Fuels Division since they have a controlling interest in the appeals process. They in turn will forward the audits and summaries to the Board's Case Management Section for handling of the appeals on the case.</li><li>• Gathers the case file and all pertinent documentation in preparation for the appeals conference.</li><li>• Consults with the DPA about the case.</li><li>• Assists in the gathering of information from the criminal case file of the petitioner, if any, that may be relevant to the case.</li><li>• Attends Appeals Conference along with the DPA.</li><li>• Informs the ID Chief of the outcome of the appeals conference.</li><li>• If no agreement is reached at the conference and the taxpayer has requested a Board Hearing, prepares for the Board Hearing. The Chief/designee represents the ID at the Board Hearing.</li></ul>
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